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## **TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1938**

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**No. 436**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**VS.**

**FANSTEEL METALLURGICAL CORPORATION**

**Vol. I**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 22, 1938  
CERTIORARI GRANTED NOVEMBER 21, 1938**





IN THE  
**United States Circuit Court of Appeals**  
**For the Seventh Circuit**

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No. 6606

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FANSTEEL METALLURGICAL CORPORATION,  
*Petitioner,*

*vs.*

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

---

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Petition for Review of order of the National Labor Relations Board.



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IN THE

Filed Mar. 2,  
1938.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit,

October Term, 1937.

6606.

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Fansteel Metallurgical Corporation,  
*Petitioner,*  
*vs.*

National Labor Relations Board,  
*Respondent.*

PETITION FOR REVIEW OF AN ORDER OF THE NA-  
TIONAL LABOR RELATIONS BOARD.

Mar. 24, 1938, Frederick G. Campbell, Clerk.

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Benjamin V. Becker,  
Max Swiren,  
Don M. Peebles,  
Harold M. Keele,  
Sidney H. Block,  
*Counsel for Petitioner.*

To the Honorable,, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Fansteel Metallurgical Corporation, a New York corporation, respectfully petitions this Honorable Court for a review of a certain order entered on March 14, 1938, by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by it against this Petitioner, appearing and designated upon the records of the Board as "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235."

3 In support of this petition, your Petitioner respectfully shows:

#### Jurisdiction.

1. (a) Your Petitioner is, and at all times herein mentioned was, a corporation duly organized and existing under the laws of the State of New York and qualified to do business as a foreign corporation under the laws of the State of Illinois. Petitioner maintains, and at all times herein mentioned has maintained, its only plant and principal place of business and transacts and at all times herein mentioned has transacted its principal business in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(b) In the complaint issued and order entered by the Board in the aforementioned proceeding, it was alleged that your Petitioner engaged in unfair labor practices in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(c) By reason of the matters alleged in subdivisions (a) and (b) of this paragraph 1, this Court has jurisdiction of this petition by virtue of section 10(f) of the National Labor Relations Act.

#### Undisputed Facts.

2. The charges upon which the Board's complaint in the above proceeding was issued grew out of the so called "Sit Down Strike" during which two key buildings of the Petitioner's plant were seized by ninety-four (94) employees and

forcibly retained from February 17, 1937 to February 26, 1937. The occupancy of these two buildings effectively closed the entire plant. The Board found in its decision

that four hours following the seizure, the Petitioner's  
4 officers made a specific demand upon the men holding the plant for the return of possession, which was rejected by the men, and thereupon the Petitioner's representatives announced that all of the men occupying the buildings were discharged for their seizure and retention.

(a) The Board and the Petitioner stipulated before the Trial Examiner to the following facts: With eight or ten exceptions, the Petitioner did not, at the time of the discharge, know the identity, number or union affiliations, if any, of the men in occupancy of the buildings. The day following the seizure, the Circuit Court of Lake County, after hearing counsel for the Petitioner and Lodge 66, issued an Injunctional Order finding that the seizure of the buildings was illegal and that the men in occupancy thereof had been discharged for seizing and retaining the buildings, and directing that the men vacate the premises and return the possession to the Petitioner. Upon the refusal of the men to comply with the order, a writ of attachment was issued for their arrest. The Sheriff made two attempts to evict the men and encountered resistance with violence on both occasions. The first attempt was unsuccessful. The men were violently evicted by the Sheriff on his second effort. On both occasions, the discharged employees laid down a barrage of quart bottles of sulphuric acid, huge quantities of heavy steel and iron missiles, including pipes, bolts and tools directly at the Sheriff and his deputies. A number of the deputies were injured by the missiles and acid.

(b) The undisputed evidence showed that the unlawful occupancy of the buildings occasioned loss to the Petitioner approximating \$60,000, consisting of physical damage to the buildings, equipment and inventory, and the loss of fixed charges and business during the period the men held possession of the building. Apart from the damage to the  
buildings occasioned by their conversion into living  
5 quarters, and the rust and other injury to the machinery resulting from neglect, the deliberate physical destruction by the men in the occupancy of the buildings consisted of breaking of windows and frames and the destruction of tools, parts, sulphuric acid and other inventory and equipment.

(c) The undisputed evidence showed the following: After the damage to the buildings and equipment had been repaired, the Petitioner reopened its plant. Such of the men discharged for the plant seizure who filed applications for reemployment were rehired by the Petitioner without condition or limitation and without reference to their previous or future union activities, excepting only three who were not reemployed for reasons unconnected with any of the charges in the Board proceeding.\* The remaining discharged employees did not apply for reemployment and, together with certain other employees in sympathy with them, engaged in what they termed a "strike." Upon the reopening of the plant, 61 members of Lodge 66, some of whom were officers and members of the bargaining committee and others of whom were outstandingly active in union affairs, resumed work at the plant.

(d) Lodge 66 and all persons named in the complaint issued by the Board, who participated in the sit down strike, were parties to the Injunction proceeding in the Circuit Court of Lake County, Illinois. After a full hearing, 37 sit down strikers were found guilty of contempt of court for refusing to vacate the Petitioner's plant and for resisting, with force, the law enforcing officers, and all were fined and sentenced to jail for varying terms from 10 days to 4 months. Thereafter, the Circuit Court of Lake County entered a final decree, without objection by counsel for the sit down strikers and Lodge 66, finding that the seizure and withholding of the plant was unlawful, and the men occupying the plant, having refused to vacate the premises, had been properly discharged "for such unlawful and violent seizure." No appeal was taken from this final decree, and it now remains in full force and effect.

#### Pleadings.

3. Upon a charge filed by an organizer for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66 (herein called "Lodge 66"), the Board issued a complaint against the Petitioner on May 25, 1937, charging, in substance:

(a) That although, on September 10th and thereafter,

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\* The jobs of two applicants had been completely abolished and the third did not apply until six weeks after operations had been resumed and his position had been filled.

Lodge 66 was the exclusive bargaining representative of Petitioner's employees, Petitioner did, on September 10, 1936, September 21, 1936, February 17, 1937 and thereafter, fail and refuse to bargain collectively with Lodge 66 on behalf of its employees;

(b) That by various acts alleged in the complaint, Petitioner coerced and interfered with the employees' right to self-organization for collective bargaining purposes;

(c) That "while engaged in operations at the North Chicago plant," the Petitioner did, on February 17, 1937, discharge certain employees named in the complaint and did subsequently discharge two other employees, by reason of their union membership and concerted activities for the purpose of collective bargaining;

(d) That on February 27, 1937, Petitioner refused to reinstate to their regular positions of employment, all of the persons named as having been discharged on February 17th and certain others, by reason of their union membership and their concerted activities for the purpose of collective bargaining; and,

(e) That Petitioner caused to be organized a labor organization of its employees known as "Rare Metal Workers of America, Local No. 1," solicited members therefor, threatened employees with loss of employment for failure to join, and contributed financial and other support to the organization in violation of the National Labor Relations Act.

4. The Petitioner filed an answer which was in part amended during the hearing to conform to the proof. The answer, as amended, denied in substance the allegations of the complaint in their entirety, and further set out:

(a) That Petitioner did not, on February 17, 1937 or at any other time, discharge any of the persons named in the complaint by reason of membership in a union or by reason of concerted activities for collective bargaining; that such of the persons named in the complaint as engaged in the seizure and occupancy of Petitioner's buildings on February 17, 1937, were on that date, upon their refusal to vacate the premises, discharged for the seizure and retention of the plant and for no other reason;

(b) That no other employees were thereafter discharged excepting a foreman who had not been a member of the union and who was discharged for insubordination and inefficiency in addition to the fact that a reorganization was contem-

plated reducing his department and making the post of foreman unnecessary;

(c) That of the persons Petitioner was charged with improperly refusing to reinstate, most had either participated in the plant seizure and been discharged there-  
8 for or had aided and abetted in the illegal and violent retention of the plant, and accordingly the Petitioner was under no duty or obligation to offer reinstatement to such persons; that certain persons had been affirmatively offered reinstatement, which they had declined; and that Petitioner was not obligated to reinstate certain persons by reason of their inefficiency to perform the required duties;

(d) That in addition to the foregoing matters, certain of the departments of the Petitioner's plant had been reorganized for efficiency purposes and as a result certain positions had been abolished, including positions formerly occupied by certain of the persons named in the complaint; that, accordingly, Petitioner was not obligated to reinstate such persons;

(e) That Lodge 66 was not on the dates in question the bona fide representative of a majority of its employees and entitled to bargain for them; and,

(f) That Petitioner did not, directly or indirectly, participate in the organization of the Rare Metal Workers of America, Local No. 1, and did not encourage membership therein or contribute to its support or, in any degree, dominate or interfere with the conduct of its affairs.

#### Hearing By Trial Examiner.

5. From June 7 to June 25, 1937, a hearing was conducted by a Trial Examiner designated by the Board. His Intermediate Report was filed with the Board on September 2, 1937, recommending a cease and desist order against the Petitioner and a requirement that Petitioner bargain with Lodge 66, withdraw recognition from Rare Metal Workers of America, Local No. 1, reinstate with back pay all but  
9 ten of the persons named in the complaint and place the remaining ten on a preferred list for reemployment. The Petitioner excepted to the Intermediate Report in its entirety and Lodge 66 excepted to the portion of the report dealing with the ten men recommended for a preferred list.



**Order To Be Reviewed.**

6. On March 14, 1938, the Board entered its decision and order. The order directed to the Petitioner, for a review of which this petition is filed, was as follows:

“Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fansteel Metallurgical Corporation, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Dominating or interfering with the formation or administration of Rare Metal Workers of America, Local #1, or any other labor organization of its employees, or contributing support to any such labor organizations;

(c) Refusing to bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North American, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees;

(b) Upon application, offer to those employees who went on strike on February 17, 1937, and thereafter, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since February 17, 1937;

*Petition for Review.*

(c) Make whole all employees who went on strike on February 17, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Withdraw all recognition from Rare Metal Workers of America, Local #1, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Rare Metal Workers of America, Local #1, as such representative;

(e) Post immediately in conspicuous places in its plant at North Chicago, Illinois, and maintain for a period of at least thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid, and that recognition is withdrawn from the R. M. W. A. as ordered above;

(f) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act."

*Principal Errors Relied Upon.*

7. The above quoted order entered by the Board on March 14, 1938, in the above mentioned proceedings entitled "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235," and that portion of the decision, findings of fact and conclusions of law, upon the basis of which said order was entered (excepting only the provision of the order dismissing the charge that Petitioner engaged in unfair labor practices within the meaning of Sec-

tion 8(3) of the Act and the findings of fact and conclusions of law upon which such provision is based), are erroneous and contrary to law and should be set aside, for the following reasons, to wit:

12 (a) The Board's conclusions of law, upon which said order was based, are erroneous.

(b) So much of the Board's decision and findings of fact as form the basis for said order are not supported by, and are in fact contrary to, the evidence.

(c) The 60 persons named in the complaint who participated in the seizure and retention of Petitioner's plant were discharged on February 17, 1937, by reason of their unauthorized and unlawful seizure and retention of the buildings and for no other reason whatsoever. The Board found, in its decision, that the dismissal of these men did not constitute a "discriminatory discharge." These men, having been properly discharged, were no longer employees of the Petitioner, and the Board's order that these men be reemployed in their former positions by the Petitioner, upon their application, is inconsistent with the Board's own findings, unsupported by the evidence, contrary to law and should be set aside.

(d) The men who unlawfully seized two key buildings of Petitioner's plant on February 17, 1937, were enabled to retain possession thereof through the furnishing of food, bedding and other supplies by certain employees of the Petitioner and others who remained on the outside of the plant. The Board found that the persons aiding and abetting the illegal retention of possession of Petitioner's buildings during the so-called "sit-down" strike, who did not return to work upon the reopening of the plant, had voluntarily absented themselves from their employment and had never applied for reinstatement. Thirteen such employees were named in the complaint. The Petitioner was not, and is not, under  
13 any duty or obligation to offer to such employees so participating in the illegal retention of Petitioner's plant reinstatement to their former positions. The Board's order that, upon application, the Petitioner grant reinstatement to such persons is unsupported by the evidence, is contrary to law and should be set aside.

(e) The persons named in the complaint were either discharged on February 17, 1937, for their illegal seizure and retention of Petitioner's plant or voluntarily absented them-

selves from the Petitioner's employment to engage in a so-called "strike." The Board properly found that Petitioner did not refuse reemployment to any of the persons named in the complaint, no application therefor having been made. Such strike began thirteen months prior to the entry of the aforementioned order by the Board and no showing was made, and there is no evidence in the record, that the strike, in connection with which the persons named in the complaint voluntarily ceased work, is, or constitutes, a "current labor dispute" as required by the National Labor Relations Act. The record shows that upon reopening of the plant the Petitioner replaced such of its former employees as failed to apply for reemployment with new employees and accordingly its plant was, at the time of the filing of the complaint herein, completely manned. The Board's order directing the Petitioner, upon application, to reemploy its former employees who had voluntarily ceased work, some of whom had thereafter been properly discharged, and who for thirteen months prior to the entry of the Board's order had voluntarily absented themselves from their employment is not supported by the evidence, is contrary to law and should be set aside.

(f) The evidence revealed that the Petitioner had itself performed certain maintenance and construction work 14 and the manufacture of certain dies needed in its operations, all of which work could be more economically obtained through the services of independent contractors especially equipped to perform the required services. Upon the reopening of the plant, the Petitioner, acting solely in the interest of more economical operations, completely abolished certain of the tool making and building and maintenance positions formerly occupied by certain of the persons named in the complaint. The functions of the positions so abolished have not, since the reopening of the plant by the Petitioner, been performed by any employees of the Petitioner. The Board's order directs that the Petitioner re-establish the positions abolished, re-employ, upon application, the persons formerly occupying such positions who went on strike February 17, 1937, and after such reemployment carry out the economy reforms previously undertaken. Such order and the failure to pass directly upon the Petitioner's contention that it is under no duty to offer reemployment to persons whose positions have been abolished in the interest of efficiency and whose functions are no longer being performed by any employee of the Petitioner, would defeat the purposes of the

National Labor Relations Act by engendering industrial strife and unrest and thereby burdening or obstructing interstate commerce; the order is unsupported by the evidence, is contrary to law and should be set aside.

(g) The Petitioner's amended answer averred, and the evidence showed, that certain of the persons named in the complaint had not, prior to the closing of the plant, conducted their work with satisfactory efficiency and that accordingly the Petitioner was under no duty to offer, either upon application or otherwise, reinstatement to such persons.

The evidence further showed that the persons in this 15 category had not actively or otherwise participated in the so-called "sit-down" strike or in any union activity, and membership which any of them may have had in Lodge 66 was unknown to the Petitioner. The Board's order directs that the Petitioner upon application, reinstate all such persons and after such reinstatement discharge them if their rate of efficiency be not satisfactory. Such order and the failure to pass directly upon the Petitioner's contention that it is under no duty to offer reemployment to such inefficient persons would defeat the purposes of the National Labor Relations Act by engendering industrial strife and unrest and burdening or obstructing interstate commerce; the order is unsupported by the evidence, is contrary to law and should be set aside.

(h) Lodge 66 was not on March 3, 1937 or March 5, 1937, or at any time thereafter, the bona fide representative of a majority of the employees of the Petitioner within the unit found by the Board in its decision to be appropriate for the purposes of collective bargaining. The order of the Board directing the Petitioner to cease and desist from refusing to bargain collectively with Lodge 66 as the exclusive representative of its hourly employees, and upon request to bargain collectively with said union, is not supported by the evidence, is contrary to law and should be set aside.

(i) The finding that Petitioner engaged in unfair labor practices prior to February 17, 1937, by interfering with, restraining and coercing its employees in the exercise by the employees in their right to self-organization is unsupported by the evidence. Accordingly, the order of the Board that the Petitioner cease and desist from interfering with, restraining or coercing its employees in their rights to 16 self-organization, as guaranteed in Section 7 of the National Labor Relations Act, is contrary to law and should be set aside.



(j) Rare Metal Workers of America, Local No. 1, is a labor organization formed by the employees of the Petitioner in April, 1937. The evidence shows that no member of Petitioner's management aided, encouraged, or in any respect participated in the organization of the union or solicitation of membership or the conduct and management of its affairs, and that no pressure or coercion of any kind was exerted upon any employees to induce them to join or refrain from joining the union. The Board's order that the Petitioner cease and desist from dominating or interfering with the formation or administration of Rare Metal Workers of America, Local No. 1, or any other labor organization of its employees, or contributing support thereto, and the Board's order that the Petitioner withdraw all recognition from Rare Metal Workers of America, Local No. 1, as to representation of its employees for the purpose of collective bargaining, are not supported by the evidence, are contrary to law and should be set aside.

**Order Exceeds Board's Statutory Authority and Contravenes Federal Constitution.**

8. The Board's order, in the respect set out in this paragraph 8, exceeds the authority conferred upon the Board by the National Labor Relations Act. The statute limits affirmative action to such orders as "will effectuate the policies of this Act." If construed to authorize the instant order, the National Labor Relations Act would contravene the provisions of the Constitution of the United States guaranteeing due process of law.

(a) The so-called "sit-down" strike, involving the seizure and retention of an employer's property by employees, is illegal, whether undertaken to enforce alleged rights under the National Labor Relations Act or otherwise. Neither the National Labor Relations Act nor any other law deprives an employer of the right to discharge employees who participate in such illegal plant seizure. The Petitioner discharged all of the employees who seized and refused to surrender Petitioner's plant, and, after such proper discharge, persons occupying the plant were no longer employees within the meaning of that term under the National Labor Relations Act. The Board was without authority in law to order reemployment by the Petitioner of the men who had been so discharged for good cause.

(b) The sit-down strikers (1) forcibly retained possession of Petitioner's plant for ten days in open defiance of the Circuit Court injunction, (2) on two separate occasions resisted, with violence, the Sheriff's efforts to enforce the injunctive order, and on both occasions hurled heavy bolts, tools, iron missiles and quart jars of sulphuric acid at the Sheriff and his deputies, injuring several of them, and (3) in resisting the law officers, deliberately broke windows, injured the building and destroyed tools and inventory. Thirty-seven sit-down strikers were convicted of contempt and received fines and jail sentences varying from ten days to four months. In ordering the reinstatement of these sit-down strikers, the Board says:

"We have, in some cases, declined to order reinstatement of striking employees despite the fact that the strike was caused by the employer's unfair labor practices. In one such case, the striker in question had been indicted for shooting and wounding a fellow employee during the course of the strike. In another, six strikers had pleaded guilty to a felony involving conspiracy to destroy property, and 18 two had pleaded guilty to the felony of stealing dynamite and converting it to their own use; all eight had been sentenced to a maximum of ten years in jail. It cannot be said that the conduct of the strikers in the present case is analogous to the conduct in these instances. They were not engaged in sabotage."

The Board's order of reinstatement apparently rests upon the failure of the sit-down strikers to inflict fatal injuries and receive long term sentences. The National Labor Relations Act does not and could not constitutionally deprive Petitioner of its right to refuse employment to men engaged in the destruction of property and deadly violence whether or not these men were indicted for, or convicted of, felonies.

(c) The jobs formerly occupied by certain of the persons named in the complaint were abolished upon the reopening of Petitioner's plant. The undisputed evidence shows that such internal reorganization was effected solely for economical and competitive reasons and in no way related to union membership or activity of any of Petitioner's employees. In ordering that Petitioner reestablish the abolished positions, reemploy the persons who had formerly occupied them and then carry out a new internal reorganization, the Board has exceeded its authority under the National Labor Relations Act.

(d) The record shows that after the discharge, on February 17, 1937, of the employees who seized and withheld the Petitioner's plant, Lodge 66 did not represent a majority of Petitioner's employees. The Board's order nevertheless requires that Petitioner now recognize Lodge 66 as the exclusive bargaining representative for all of its employees.

The Board's decision indicates that this portion of the 19 order is imposed upon the Petitioner as a penalty for failing to recognize Lodge 66 as sole bargaining representative in February, 1937. The Board is without authority in law either to impose a penalty or to designate a bargaining representative contrary to the desires of Petitioner's employees.

9. The Board's order requires that Petitioner (a) re-employ persons who had been discharged for their violent and illegal seizure and retention of Petitioner's plant and who thereafter, by their illegal conduct and violent resistance to the law enforcement officers, destroyed Petitioner's property and otherwise damaged Petitioner in an approximate amount of Sixty Thousand Dollars (\$60,000.00), and (b) reinstate employees who aided and abetted in the illegal retention of Petitioner's plant and in the resultant destruction of property and other damage to the Petitioner in the approximate amount of Sixty Thousand Dollars (\$60,000.00). No restitution for such damage has been offered by the employees and discharged employees occasioning the same, and none has been required by the Board as a condition of reemployment and reinstatement. By reason of the foregoing, the Board's order constitutes a deprivation of Petitioner's property in violation of the provisions of the Constitution of the United States guaranteeing due process of law and accordingly is contrary to law, null and void and should be set aside.

#### Denial of Due Process in Hearing by Board.

10. In its conduct of the proceedings above described resulting in the entry of the aforementioned order, the Board denied to the Petitioner its constitutional right to due process of law in the following respects, to wit:

(a) By the refusal of the Board and the Trial Examiner to grant Petitioner's application for subpoenas and subpoenas duces tecum, the Petitioner was hampered and unduly prejudiced in the presentation of evidence and was prevented from adducing and presenting evidence in accord-



ance with the National Labor Relations Act and the constitutional guarantee of due process of law. Petitioner's application, which complied with the regulations of the Board and was filed together with the answer, sought (1) subpoenas for the persons named in the complaint as having been discharged and refused reemployment by the Petitioner by reason of union membership and union activity, (2) a subpoena for a conciliator of the United States Department of Labor having information respecting violence and threatened violence by certain of the persons named in the complaint, and (3) subpoenas duces tecum directed to Lodge 66 for the production at the hearing of its minute books, books of account, check books, membership cards, books and lists, and correspondence relating to the solicitation of members among the Petitioner's employees and relating to the participation of Lodge 66 or its officers and members in the seizure and retention of Petitioner's plant. The application showed that the last named documents were sought to establish the number and status of the membership of Lodge 66 from September 10, 1936 to the date of the hearing, the use by Lodge 66 of violence and other illegal duress to compel employees of the Petitioner to accept membership therein, and the participation of Lodge 66 in the conspiracy to seize and retain Petitioner's plant and otherwise to engage in violence. After the hearing had been in progress more than a week, the Board entered an order denying in its entirety Petitioner's application for subpoenas. During the hearing, witnesses for the Board testified orally on matters contained in the written records which Petitioner sought to have produced by the subpoenas duces tecum it requested. The Petitioner there-  
21 upon requested, without avail, that subpoenas be issued forthwith for use in cross-examining such witnesses and in contradicting their testimony. By the repeated refusal of the Board and Trial Examiner to issue subpoenas, Petitioner was deprived of an opportunity for a full and fair hearing as guaranteed by the National Labor Relations Act and the due process provisions of the Constitution of the United States.

(b) During the hearing before the Trial Examiner, the attorney for the Board had in his possession numerous subpoenas signed in blank by the Board which such attorney was enabled to, and did, use, without application to the Board and without limitation, to obtain witnesses and evidence in

support of the Board's complaint. The hearing lasted eighteen days, and several hours after it had been entirely closed, the Trial Examiner on his own motion, reopened the hearings, advising Petitioner that the Board had authorized its trial attorney to fill in one of the blank subpoenas in his possession for a limited portion of the membership records of Lodge 66 sought by the application, and a subpoena directed to the aforementioned conciliator of the Department of Labor who was admittedly not then available for service. Such belated and limited action did not and could not cure the prejudice caused to the Petitioner because (1) the hearing had terminated and the numerous witnesses who testified as to the contents of the records were not available for cross-examination, and (2) the extent of the subpoena so granted to the Petitioner after the termination of the hearing was so limited in scope as to be wholly insufficient to meet the purposes of the Petitioner in seeking the issuance of the same.

(c) Throughout the proceeding the Board exhibited hostility and prejudice against the Petitioner and unmistakable partisanship in favor of Lodge 66. Notwithstanding that 22 the same parties, the same counsel and the same witnesses were engaged in trial before the Circuit Court of Lake County on contempt proceedings, the Board and the Trial Examiner denied Petitioner's motion to adjourn the hearing until the completion of the court trial. Only the intervention of an injunction restraining interference with the judicial proceeding saved the Petitioner from the necessity of going forward in two separate proceedings on substantially the same subject matter at the same time.

(d) Witnesses for the Board were permitted to testify from memory as to the contents of records in their possession, for which subpoenas had been refused by the Board, and the Trial Examiner encouraged such witnesses to refuse voluntarily to produce such records. Throughout the hearing he sought to limit and minimize the testimony respecting violence and other illegal acts attendant upon the sit-down strike. While limiting the cross-examination by the Petitioner to the subject matter of the direct examination, the Trial Examiner extended to the Board wide and unlimited scope upon cross-examination.

**Order is Ambiguous and Contrary to Purposes of National Labor Relations Act.**

11. By its ambiguity and its failure to pass upon and give effect to (a) the complete abolition of certain jobs in the Petitioner's plant, (b) the substantial modification in pay rates and other conditions relating to certain other jobs in Petitioner's plant, and (c) the drastic curtailment in number of employees resulting from the current business depression, the Board's order would, if enforced, defeat the purposes of the National Labor Relations Act by engendering industrial strife and unrest, require additional and further proceedings before the Board on matters now in evidence in this record, and otherwise burden and obstruct interstate commerce.

Wherefore, Fansteel Metallurgical Corporation petitions this Honorable Court for a review of the aforementioned order entered by the Board on March 14, 1937, in proceedings entitled "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235," and your Petitioner respectfully prays:

(1) That the Board be directed to certify and deliver to your Petitioner a transcript of the entire record in the aforementioned proceeding before the Board;

(2) That the Petitioner may be granted leave to file such certified record in the proceedings before the Board within a reasonable time to be fixed by this Honorable Court; and

(3) That the aforesaid order of the Board be set aside and held for naught and that your Petitioner, its officers, agents and representatives, be relieved by order of this Honorable Court from the necessity of complying therewith.

And your Petitioner will ever pray.

Fansteel Metallurgical Corporation,

By R. J. Aitchison,

*President.*

Benjamin V. Becker,

Max Swiren,

Don M. Peebles,

Harold M. Keele,

Sidney H. Block,

*Counsel for Petitioner.*

24 State of Illinois, }  
County of Cook. } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation the Petitioner in the above and foregoing petition, and makes this affidavit on its behalf; that he has read the foregoing petition by him subscribed and has knowledge of the contents thereof and that the statements of fact made in the above and foregoing petition are true to the best of his knowledge and belief.

R. J. Aitchison.

Sworn to and subscribed before me this 24th day of March,  
A. D. 1938.

Varian M. Bates,  
*Notary Public in and for the County  
and State Aforesaid.*

(Seal)

25 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.  
\* \* (Caption—6606) \* \*

**ANSWER OF THE NATIONAL LABOR RELATIONS  
BOARD TO PETITION TO REVIEW, AND REQUEST  
FOR ENFORCEMENT OF AN ORDER OF THE NA-  
TIONAL LABOR RELATIONS BOARD.**

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board (hereinafter referred to as the Board) by J. Warren Madden, Chairman, and Edwin S. Smith, Member, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. A. Sec. 151, et seq.) files this answer and request for the enforcement of an order of the National Labor Relations Board:

(1) The Board admits each and every allegation contained in paragraphs "1" and "6" of the petition to review.

(2) With respect to the allegations contained in paragraphs "2", "3", "4", and "5" of the petition to review, the Board for a full and exact statement of the provisions of the charges, complaint, notices of hearing, answer, amended answer, stipulations, intermediate report, petitioner's excep-

tions to said report, and decision of the Board including its findings of fact, conclusions of law, order, and other proceedings had in said matter before the Board, prays reference to certified copies thereof contained in the transcript of the entire record of the proceedings.

(3) The Board denies each and every allegation contained in paragraphs "7", "8", "9", "10", and "11" of the petition to review.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays this Honorable Court that the said petition, insofar as it prays that the Board's order be set aside, be denied.

(4) Further answering, the National Labor Relations Board, pursuant to Section 10(f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board in the proceeding instituted against petitioner, Fansteel Metallurgical Corporation, which proceeding is designated on the records of the Board as Case No. C-235, the title thereof being "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66."

In support of its request for the enforcement of said order the Board alleges:

(a) Petitioner is and at all times herein mentioned was a corporation organized and existing by virtue of the laws of the State of New York. Petitioner maintains, and at all times herein mentioned has maintained, its only plant and principal place of business and transacts and at all times herein mentioned has transacted, its principal business in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(b) The unfair labor practices which the Board found the petitioner had been and was then engaged in occurred in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(c) By reason of the matters alleged in subparagraphs (a) and (b) of paragraph 4 hereof, this Court has jurisdiction of the petition herein and of this request for enforcement, by virtue of Section 10(f) of the National Labor Relations Act.

(d) On May 25, 1937, charges and amended charges having been duly filed with the Board by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, the Board by its Regional Director for the



Thirteenth Region issued its complaint in said proceeding, alleging that the petitioner had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which complaint, together with a notice of hearing therein, was duly served upon petitioner. Said hearing was noticed for June 7, 1937. Thereafter, on June 2, 1937, the petitioner filed its answer to said complaint.

(e) Thereafter, on June 3, 1937, the Board made an order designating Tilford E. Dudley as Trial Examiner in said proceedings.

(f) Thereafter, from June 7 to June 25, 1937, a hearing was held before said Trial Examiner in Waukegan, Illinois. Full opportunity to be heard, to examine, and cross-examine witnesses and to adduce evidence bearing upon the issues was afforded all parties.

(g) Thereafter, on September 2, 1937, the Trial Examiner filed an intermediate report containing his findings and recommendations. Thereafter, on September 17, 1937, petitioner filed exceptions to said intermediate report and on September 20, 1937, the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, filed exceptions to certain parts of said intermediate report.

(h) Thereafter, on March 14, 1938, the Board being sufficiently advised in the premises and having duly considered the matter, and being of the opinion upon all the testimony and evidence that petitioner had been and was then engaged in certain unfair labor practices affecting commerce within the meaning of the Act, modified and affirmed as so modified, the rulings of the Trial Examiner and duly stated its findings of fact and conclusions, and entered the following order directed to petitioner, its officers, agents, successors, and assigns:

### Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fansteel Metallurgical Corporation, its officers, agents, successors and assigns shall:

28 1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-

organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Dominating or interfering with the formation or administration of Rare Metal Workers of America, Local #1, or any other labor organization of its employees, or contributing support to any such labor organizations;

(c) Refusing to bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees;

(b) Upon application, offer to those employees who went on strike on February 17, 1937, and thereafter, immediate and full reinstatement of their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since February 17, 1937;

(c) Make whole all employees who went on strike on February 17, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Withdraw all recognition from Rare Metal Workers of America, Local #1, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Rare Metal Workers of America, Local #1, as such representative;

(e) Post immediately in conspicuous places in its plant at North Chicago, Illinois, and maintain for a period of at least

thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid, and that recognition is withdrawn from the R. M. W. A. as ordered above;

(f) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8(3) of the Act.

29 Thereafter, on March 14, 1938, said order was served upon petitioner by sending a copy thereof postpaid, bearing government frank, by registered mail to Max Swiren, petitioner's attorney, at One North La Salle Street, Chicago, Illinois.

(i) Said order is and at all times since its issuance has been in full force and effect.

Wherefore, the Board prays this Honorable Court that it deny the petition to set aside the Board's order, and that it grant the request made herein for enforcement of said order; and pursuant to Section 10(f) of the National Labor Relations Act is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony, and evidence, findings of fact and conclusions of law, and order of the Board. The Board further prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and transcript to be served upon petitioner, and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings therein, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon, a decree denying in whole the petition to set aside and enforcing in whole the said order of the Board and requiring petitioner, its officers, agents, successors, and assigns, to comply therewith.

J. Warren Madden,  
*Chairman.*

Edwin S. Smith,  
*Member National Labor Relations Board.*

Dated at Washington, D. C. this 2nd day of April, 1938.

Charles Fahy,  
*General Counsel.*



30 District of } ss.  
Columbia. }

J. Warren Madden and Edwin S. Smith, being first duly sworn, state that they are Chairman and Member, respectively, of the National Labor Relations Board; that they have read the foregoing answer and request for enforcement subscribed by them and have knowledge of the contents thereof; and they further on oath state that the statements made in the foregoing answer and request for enforcement are true to the best of their knowledge and belief.

J. Warren Madden.  
Edwin S. Smith.

Sworn and subscribed before me this 2nd day of April, 1938.

(Seal) John E. Lawyer,  
*Notary Public, District of Columbia.*

My commission expires September 8, 1939.

30½ (Endorsed) U. S. C. C. A.—7 Filed Apr 4 1938 Frederick G. Campbell Clerk.

123 BEFORE THE NATIONAL LABOR RELATIONS BOARD.  
• • (Caption—XIII-C-80) • •

### CHARGE.

(Board Exhibit 1-I.)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Fansteel Metallurgical Company, 1009, 22nd Street, North Chicago, Illinois, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that

The said Company, through its officers and agents, did, on the 10th day of September, 1936, refuse to bargain collectively with the properly chosen representatives of its employees, a labor organization known as Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 66, and in that the Company has since that date refused, and still does refuse, to bargain collectively with the said labor organization.

*Complaint.*

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,  
*Organizer for Amalgamated Association  
of Iron, Steel and Tin Workers of  
America, Local 66; in the Fansteel  
Metallurgical Company Plant.*

Address of Organizer:

Clayton Hotel,  
Waukegan, Illinois.

Subscribed and sworn to before me this fifteenth day of September, 1936, at Chicago, Illinois.

Anna M. Naun  
*Notary Public.*

(Seal)

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## UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

Thirteenth Region.

In the Matter of

Fansteel Metallurgical Corporation

and

Amalgamated Association of Iron,  
Steel and Tin Workers of North  
America, Lodge 66.

Case No.  
XIII-C-80.

## COMPLAINT.

Board Exhibit No. 1A.

It having been charged by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, of North Chicago, Illinois, that the Fansteel Metallurgical Corporation, 1009 Twenty Second Street, North Chicago, Illinois, hereinafter called the respondent, at its plant in North Chicago, Illinois has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth

and defined in the National Labor Relations Act approved July 5, 1935, the National Labor Relations Board hereby alleges the following:

1. The respondent is and has been continuously since March 13, 1917 a corporation organized and existing under the laws of the State of New York; respondent maintains an office at 120 Broadway, New York, N. Y., and has and maintains its executive offices and plant at North Chicago, Illinois; respondent owns or controls the following subsidiary corporations: Tantalum Corporation of America, Ramet Corporation of America, Vascoloy-Ramet Corporation, and Fansteel Mining Corporation; the respondent and its subsidiaries at respondent's plant at North Chicago, Illinois are now and during the last five years have been engaged in the development, refinement, manufacture, sale and distribution of non-ferrous rare metals, including tantalum, columbium, tungsten, molybdenum, caesium and rubidium and products thereof. The business engaged in includes (a) the extraction of such rare metals from their ores or commercial intermediate products by chemical, metallurgical and electro-metallurgical processes, many of which are patented or secret; (b) the manufacture of rare metals into useful, commercial form; (c) the manufacture of chemical compounds of the metals; (d) the manufacture of alloys into which the rare metals are incorporated; and (e) the fabrication of apparatus, equipment or parts made in whole or in part from such rare metals or their alloys. Among the fabricated products manufactured from such rare metals by the respondent are contact points for ignition systems, varied tantalum parts for chemical and rayon industries, molybdenum and special alloy wire for use in vacuum tubes, radios and commercial radio tubes, battery chargers and rectifiers. Through its subsidiary, Vascoloy-Ramet Corporation, the respondent manufactures machine cutting tools and drawing dies and manufactures "Vascoloy-Ramet", a hard cutting carbide for use in such tools. Sales of this subsidiary are now made through Vanadium Alloys Steel Company. A large research laboratory is maintained for the further development of both the processes and products of the respondent and the extension of their uses. The respondent conducts its own sales organization, except in certain foreign countries where it operates through exclusive sales agents, and except the sale of products of the Vascoloy-Ramet Corporation above referred to.

2. The respondent, in the course and conduct of its busi-

ness and in the operation of its Plant at North Chicago, Illinois, causes and has continuously caused large quantities of material consisting of ores, chemicals, acids, non-ferrous metals of various kinds and in various forms, and various other raw materials used in its processes and development, refinement and manufacture of tantalum, columbium, tungsten, molybdenum, caesium and rubidium and products thereof, to be purchased and transported in interstate and foreign commerce from and through states of the United States other than Illinois and from foreign countries to the North Chicago Plant in the State of Illinois, and causes and has continuously caused large quantities of the finished products manufactured and produced by it to be sold, transported and distributed in interstate and foreign commerce from the North Chicago Plant in the State of Illinois into and through states of the United States other than the State of Illinois and into foreign countries.

3. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, hereinafter called the union, is a labor organization as defined in Section 2, Subdivision 5 of the National Labor Relations Act.

4. A unit for the purpose of collective bargaining composed of the production and maintenance workers employed by the respondent at its North Chicago Plant except supervisory, clerical and laboratory employees, would insure to employees the full benefit of their right to self-organization and would otherwise effectuate the policies of the National Labor Relations Act, and is a unit appropriate for the purposes of collective bargaining.

5. Prior to September 10, 1936 and thereafter, a majority of the employees in the said unit had designated the union as its representative for the purposes of collective bargaining with respondent. By virtue of Section 9 (a) of said Act, the union was and has been since said date, the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

49 6. On or about September 10, 1936, September 21, 1936 and February 17, 1937 and at all times thereafter, while engaged in operations at the North Chicago Plant above described, the respondent has refused and failed and does now refuse and fail to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with said union as the exclusive representative

of all employees in the aforementioned unit, in that the respondent has refused and failed and does now refuse and fail to meet, bargain and negotiate with the representatives duly designated for that purpose by the said union; by such acts and each of them respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (5) of said Act.

7. On or about August 17, 1936 the respondent, while engaged in operations as above described entered into a contract in writing with the National Metal Trades Association, whose policies are that of the open shop, to accept and did accept into their employment one Alfred Johnstone, an employee, operative and agent of the National Metal Trades Association, for the purpose of espionage, intimidation, interference, spying and reporting upon, and keeping under surveillance and reporting upon, the activities and membership of said union; respondent did retain in its employ and avail itself of the services of said Johnstone for the duties and purposes above-mentioned until December 1, 1936; during the time said Johnstone was in the service of respondent he became a member of the union, took an active part in the work of the union and from time to time reported thereon to the National Metal Trades Association who in turn reported to respondent; on or about September 8, 1936 the respondent employed one A. J. Anslem as Superintendent of the North Chicago Plant for, among other things, the purpose of breaking up the union; between the dates of November 11, 1936 and February 1, 1937 respondent transferred John Kond-  
50 rath, a machinist and President of the union, from the Machine Shop to the office of respondent in which office there was a drill press and a lathe, and ordered and required him to work there from 8 A. M. until 4 P. M., with one hour for lunch, but forbade him to enter the Plant or yard to talk with or associate with any of respondent's employees; on or about February 27, 1937 and thereafter down to and including the time of the filing of this complaint, the respondent has sent, caused to be sent or acquiesced in the sending of fellow workers and others to the homes of its striking workers and offered to reinstate them to their positions of employment as individuals upon the abandonment by the employees of their rights guaranteed in Section 7 of the Act; all of such acts and each of them did and does have the purpose, intent and effect of intimidating, coercing, restraining and interfering with the lawful exercise of the rights of respondent's employees



guaranteed in Section 7 of the Act; the respondent by such acts and each of them engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of the Act.

8. On February 17, 1937 while engaged in operations at the North Chicago Plant as described above, respondent, acting by and through its officers and agents, caused to be discharged the following employees:

Andrew Rode, Edward Kaucic, Lester Crump, Charles Warner, John Kondrath, Thomas E. Fagan, John Starovich, Harold Dreyer, Raymond DuBois, Angelo Galbavy, William D. Magness, Al Bunton, Joseph Petraitis, Edward Schuman, Fred Hensley, Anton Nagode, John Praski, Luther Small, Edward Brunke, Stanley Grum, Jerome Camernick, Jr., Clarence Dreyer, Carl A. Swanson, Fred Yaeger, Art Holm, Jr., Joseph Aigner, Frank Moxey, Harry H. Rayner, Phil Graimer, Robert Pratt, Jasper Leskovec, Frank Museck, Ed. Ruck, Mike Zelenick, John Grom, Andy M. Anderson, Oscar Johnson, Nick Bankowisch, Frank Latz, Steeve Ark, Paul Wells, Joan Bissonnette, Virginia Butterfield, Isabelle Recktenwald, Vivian Johnson, John Kudith, Victor Hertel, Elmer Luke, John W. Jackoway, Elsworth Peters, Charles E. Fulkerson, Charles E. Fulkerson, Jr., Fern Gartley, Bartol Prutovey, Eric Lindberg, George Kallio, Nate Mogel, Victor Weatherhead, Jack Taylor, Bessie Luczo, Tillie Mesec, Alan White, Frank Zelenick, Ted Christianson, Roy Brown, Leo P. Daluga, Merritt Pratt, Peter Skarbalus, Gus. Canclakes, Joseph Chudy, George W. Smith, Arno Romppaine, Orville Romppaine, Joseph Richveis, Marguerite Siefert, Evelyn Gramer, Frances Fellens, Joseph Hoff, Theodore Ohlson, Tony Kancilja, David Nostell, Steve Luczo, Eugene D. Hendee, Vincent Ditmeyer, George Mondro, Otto Latz, Frank Furlan, Joe Lima, Herman Latz, Sonny Shure and Paul Makoval;

51 and each of them, for the reason of their membership in the union and that they engaged in concerted activities for the purpose of collective bargaining and for other mutual aid and protection.

9. On February 18, 1936 the respondent while a strike hereinafter referred to was in progress, discharged and thereafter refused to reinstate W. D. Crump, one of its employees, by reason of his membership in the union; on February 25, 1937 the respondent while a strike hereinafter referred to was in progress, discharged and thereafter refused to reinstate Art

Holm, Sr. for the reason that respondent suspected he was a member of the union and that he had engaged in concerted activities with other employees for his and their mutual aid and protection.

10. By the discharge of the above individuals and each of them named in paragraphs 9 and 10, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the above named individuals, and each of them, and did discourage membership in the union and did thereby engage in unfair labor practices within the meaning of Section 8, Subdivision (3) of the Act.

11. On or about February 27, 1937 and thereafter the respondent, while engaged in operations at the North Chicago Plant, through its officers and agents, refused and failed and does now refuse and fail to reinstate to their regular positions of employment the following persons, employees of respondent:

Andrew Rode, Edward Kaucic, Lester Crump, Charles Warner, John Kondrath, Thomas E. Fagan, John Starovich, Harold Dreyer, Raymond DuBois, Angelo Galbavy, William D. Magness, Al Bunton, Joseph Petraitis, Edward Schuman, Fred Hensley, Anton Nagode, John Praski, Luther Small, Edward Brunke, Stanley Grum, Jerome Camernick, Jr., Clarence Dreyer, Carl A. Swanson, Fred Yaeger, Art Holm, Jr., W. D. Crump, Joseph Aigner, Frank Moxey, Harry H. Rayner, Phil Graimer, Robert Pratt, Jasper Leskovec, Frank Muscek, Ed. Ruck, Mike Zelenick, John Grom, Andy M. Anderson, Oscar Johnson, Nick Bankowisch, Frank Latz, Steve Ark, Paul Wells, Joan Bissonnette, Virginia Butterfield, Isabelle Recktenwald, Vivian Johnson, John Kudith, Victor Hertel, Elmer Luke, John W. Jackoway, Elsworth Peters, Charles E. Fulkerson, Charles E. Fulkerson, Jr., Fern Gartley, Barthol Prutovey, Eric Lindberg, George Kallio, Nate Mogel, Victor Weatherhead, Art Holm, Sr., Jack Taylor, Bessie Luczo, Tillie Mesec, Alan White, Frank Zelenick, Ted Christianson, Roy Brown, Leo P. Daluga, Merritt Pratt, Peter Skarbalus, Gus.

Canclakes, Joseph Chudy, George W. Smith, Arno Romppaine, Orville Romppaine, Joseph Richveis, Marguerite Siefert, Evelyn Gramer, Frances Fellens, Joseph Hoff, Theodore Ohlson, Tony Kancilja, David Nostell, Steve Luczo, Eugene D. Hendee, Vincent Ditmeyer, George Mondro, Otto Latz, Frank Furlan, Joe Lima, Herman Latz, Sonny Shure and Paul Makoval,

and each of them, for the reason of their membership in the



union and that they had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

12. By the refusal to reinstate the above named individuals and each of them as above set forth to their regular positions of employment, the respondent did discriminate and is discriminating in regard to the tire and tenure of employment of the above named individuals and each of them, and did discourage and is discouraging membership in the union, and did thereby engage in and is now engaging in unfair labor practices within the meaning of Section 8, Subdivision (3) of said Act.

13. On September 10, 1936 and thereafter the respondent, while engaged in operations at the North Chicago Plant as above described, through its officers, agents and servants; to-wit A. J. Anslem, Superintendent; Luther Henry, Assistant Superintendent; James Hall, foreman and F. Schardt, foreman, did attempt to organize a company union of its employees and to that end the employees were threatened with the loss of employment for failure to join said company union; on and after February 27, 1937 and thereafter respondent caused to be organized in its plant at North Chicago, Illinois a labor organization of its employees known as Rare Metal Workers of America Local No. 1, and did dominate and interfere with its formation by its officers, agents and servants soliciting members therein, by threatening employees with loss of employment for failure to join said organization and by contributing financial and other support to said organization; all of such acts and each of them had and have for their intent and purpose the effect of restraining, coercing and interfering with the exercise by employees of  
53 rights guaranteed in Section 7 of the Act and respondent by such acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (2) of the Act.

14. On February 17, 1937 by reason of the acts and conduct of the respondent herein described, the production and maintenance employees of respondent went on strike and all the normal operations and business of respondent, except laboratory experiments, ceased.

15. By all such acts, and each of them enumerated in paragraph #6 above, by the refusal to meet with, deal, negotiate and bargain with said union as the representative of its employees; by the discharge and refusal to reinstate its employ-

ees as enumerated in paragraphs 8, 9, 10 and 11 above; by the attempted formation and domination of a company union as enumerated in paragraph 13 above, the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and by all said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

16. The activities of respondent set forth in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 above, occurring in connection with the operation of respondent described in paragraphs 1 and 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent enumerated in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1), (2), (3) and (5) and Section 2, Subdivisions (6) and (7) of said Act.

54 Wherefore, the National Labor Relations Board on this 25th day of May, 1937 issues its complaint against the Fansteel Metallurgical Corporation, respondent herein.

#### Notice of Hearing.

Please Take Notice that on the 7th day of June, 1937 at 10:00 o'clock Central Daylight Saving Time in the forenoon, at Room 4, New U. S Post Office Building, Waukegan, Illinois, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with said Rules and Regulations, Series I, as amended, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Acting Regional Director for the Thirteenth Region, with offices at Room 866, 20 North Wacker Drive, Chicago, Illinois, acting in this matter as the agent of the National Labor Relations Board, an answer to the attached complaint on or before the First day of June, 1937.

Enclosed herewith for your information is a copy of Rules

*Amended Charge.*

and Regulations—Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing to be signed by the Acting Regional Director for the Thirteenth Region on the 25th day of May, 1937.

Leonard C. Bajark,  
*Acting Region Director,*  
Thirteenth Region,  
Room 866, 20 North Wacker Drive,  
Chicago, Illinois.

55 Service Acknowledged and Copy Received this 26th Day of May, 1937, at 2:25 P. M.

Levinson, Becker, Peebles & Sarien,  
By L. Greenberg,  
*For the Fansteel Metallurgical Corporation, Respondent.*

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*For the Amalgamated Association  
of Iron, Steel and Tin Workers  
of North America, Lodge 66.*

56 BEFORE THE NATIONAL LABOR RELATIONS BOARD.  
• • (Caption—XIII-C-80) • •

## AMENDED CHARGE.

Received May 21, 1937.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Fansteel Metallurgical Corporation, 1009-22nd Street, North Chicago, Illinois, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2), (3) and (5) of said Act, in that

On September 10, 1936, September 21, 1936, and February 21, 1937, and thereafter, the Company failed to bargain collectively with Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America, as representative of the Production and Maintenance Employees.

That on September 10, 1936, the Company attempted to form a Company Union and on and after February 27, 1937, did dominate and interfere with the administration and formation of a labor organization known as Rare Metal Workers of America, Local No. 1.

That the Company did discharge 95 of its employees on February 17, 1937, for the reason that they were members of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

That on February 27, 1937, and thereafter, the Company has refused to reinstate 95 of its said employees for the reason that they engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

That from August 17, 1936, to December 1, 1936, the Company hired a labor spy to interfere with, restrain and coerce the employees in the exercise of their rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,

*Organizer for Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66.*

108 S. Genesee Avenue,  
Waukegan, Illinois.

Subscribed and sworn to before me this 21st day of May, 1937.

(Seal)

Anna M. Nann,  
*Notary Public.*

34      *Rules of National Labor Relations Board.*

58 •    NATIONAL LABOR RELATIONS BOARD

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RULES AND REGULATIONS

Series 1, as Amended

and

NATIONAL LABOR RELATIONS ACT

(48 Stat. 449)

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April 27, 1936

(Seal)

United States

Government Printing Office

Washington : 1937

For sale by the Superintendent of Documents, Washington,  
D. C. Price 5 cent.

59      NATIONAL LABOR RELATIONS BOARD

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J. Warren Madden, Chairman

John M. Carmody

Edwin S. Smith

Benedict Wolf, Secretary

Charles Fahy, General Counsel

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NATIONAL LABOR RELATIONS BOARD  
Washington, D. C.

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Rules and Regulations  
Series 1, as Amended

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General Rules and Regulations

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby issues the following Rules and Regulations—Series 1—as amended (General Rules and Regulations), which it finds necessary to carry out the provisions of said Act. Said Rules and Regulations—Series 1—as amended shall become effective upon the signing of the original by the members of the Board and upon the publication thereof in the Federal Register, and shall supersede the Rules and Regulations—Series 1—as amended (General Rules and Regulations) signed by the Board on April 15, 1935, which are hereby rescinded. The Rules and Regulations—Series 1—as amended (General Rules and Regulations) shall be in force and effect until amended or rescinded by rules and regulations hereafter made and published by the Board.

Signed at Washington, D. C., this 27th day of April, 1936.

J. Warren Madden, *Chairman.*

John M. Carmody, *Member.*

Edwin S. Smith, *Member.*

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Article I

Definitions

Section 1. The terms "person", "employer", "employee", "representatives", "labor organization", "commerce", "affecting commerce", and "unfair labor practice", as used herein, shall have the meanings set forth in Section 2 of the National Labor Relations Act, a copy of which Act is appended hereto.

Sec. 2. The term "Act" as used herein shall mean the National Labor Relations Act, and the term "Board" shall mean the National Labor Relations Board.



62     Sec. 3. The term "Region" as used herein shall mean that part of the United States or any Territory thereof fixed by the Board as a particular Region.

Sec. 4. The term "Regional Director" as used herein shall mean the agent designated by the Board as Regional Director for a particular Region.

Sec. 5. The term "Trial Examiner" as used herein shall mean the Board, its member, agent or agency conducting the hearing.

Sec. 6. The term "State" as used herein shall include all States, Territories, and possessions of the United States and the District of Columbia.

## Article II

### Procedure Under Section 10 of the Act for the Prevention of unfair Labor Practices Charge

Section 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, the Regional Director shall dismiss any complaint based thereon.

Sec. 2. Except as provided in Section 37 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the Regional Director for any of such Regions.

Sec. 3. Such charge shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgements. Three additional copies of such charge shall be filed. A blank form for making a charge will be supplied by the Regional Director upon request.

Sec. 4. Each charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

(b) The full name and address of the person against whom the charge is made (hereafter referred to as the "respondent").



(c) A clear concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

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### Complaint

Sec. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the "parties to the proceeding") a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint.

Sec. 6. Upon his own motion or upon proper cause shown by any of the parties to the proceeding the Regional Director issuing the complaint may extend the date of such hearing.

Sec. 7. Any such complaint may be amended by the Trial Examiner or the Board in his or its discretion at any time prior to the issuance of an order based thereon, upon such terms as may be deemed just.

Sec. 8. Any such complaint may be withdrawn before the hearing by the Regional Director on his own motion.

Sec. 9. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director.

### Answer

Sec. 10. The respondent shall have the right, within five days from the service of the complaint, to file an answer thereto. Such answer shall contain a short and simple statement of the facts which constitute the grounds of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation in the com-

plaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board.

Sec. 11. Such answer shall be filed with the Regional Director issuing the complaint. Such answer shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post-office address of the respondent. The respondent shall file three additional copies of the answer for the use of the Board. Immediately upon filing his answer the respondent shall serve a copy thereof upon each of the other parties to the proceeding.

Sec. 12. Upon his own motion or upon proper cause shown by respondent the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

Sec. 13. In any case where a complaint has been amended the respondent shall have an opportunity to amend his answer within such period as may be fixed by the Trial Examiner, if he amends the complaint, or by the Board, if it amends the complaint.

### Motions

Sec. 14. All motions made previous to or subsequent to the hearing shall be filed in writing with the Regional Director issuing the complaint, and shall briefly state the order or relief applied for and the grounds for such motion. The moving party shall file an original and three additional copies of all such motions for the use of the Board. Immediately upon the filing of such motion, the moving party shall serve a copy thereof upon each of the other parties to the proceeding. All motions made at the hearing (except motions to intervene, as provided in Section 19 of this Article) shall be stated orally and included in the stenographic report of the hearing.

Sec. 15. The Trial Examiner designated to conduct the hearing shall rule upon all motions (except as provided in Sections 6, 12, and 19 of this Article). The Trial Examiner may, before the hearing, rule on motions filed previous to the hearing, and shall file his ruling, and any order in connection therewith, with the Regional Director issuing the complaint. The Regional Director shall cause copies thereof to be served

upon the parties to the proceeding. Rulings on motions, and any orders in connection therewith, if announced at the hearing, shall be stated orally and included in the stenographic report of the hearing; in all other cases they shall be issued in writing and filed with the Regional Director, who shall cause a copy of the same to be served upon each of the parties to the proceeding, or shall be contained in the Intermediate Report. Whenever the Trial Examiner has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to Section 37 of this Article, the Board shall rule on such motion.

Sec. 16. All motions, rulings, and orders shall become part of the record in the proceeding, and rulings and orders claimed to be substantially prejudicial shall be reviewed by the Board, upon request made for such review, in conjunction with the Board's consideration of the Intermediate Report.

65 Sec. 17. If any motion in the nature of a motion to dismiss the complaint is granted by the Trial Examiner, the party making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., stating the grounds for review, and filing a copy of such request with the Regional Director and the other parties to the proceeding. Unless such request for review is filed within ten days from the date of the order of dismissal, the case shall be considered closed. The Board may, upon motion made within a reasonable period and for good cause shown, reopen the record for further proceedings.

Sec. 18. The right to make motions or to make objection to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Trial Examiner or the Board.

### Intervention

Sec. 19. Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing with the Regional Director issuing the complaint setting out the grounds upon which such person or organization claims to be interested. The original of such motion shall be signed and sworn to by the person or labor organization filing the motion, who shall file three additional copies of such motion for the use of the Board. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the

other parties to the proceeding. The Regional Director shall rule upon all such motions filed prior to the hearing, and the Trial Examiner shall rule upon all such motions filed at the hearing, in the manner set forth in Section 15 of this Article. The Regional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just. The Regional Director shall cause a copy of said ruling to be served upon each of the parties to the proceeding.

### Witnesses and Subpenas

Sec. 20. Witnesses shall be examined orally under oath, except that for good and exceptional cause the Trial Examiner may permit their testimony to be taken by deposition under oath. Any such deposition shall be taken in accordance with the procedural requirements for the taking of depositions provided by the law of the State in which the hearing is pending.

Sec. 21. Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents that relate to any matter under investigation or in question, before the Board, its member, agent, or agency, conducting the hearing or investigation. Applications for the issuance of such subpoenas may be filed by any party to the proceedings with the Regional Director, or, during the hearing, with the Trial Examiner. Such applications shall be timely and shall specify the name of the witness and the nature of the facts to be proved by him, and must specify the documents, the production of which is desired, with such particularity as will enable them to be identified for purposes of production.

Sec. 22. Witnesses summoned before the Trial Examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

## Hearing

Sec. 23. The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner specifically designated by the Board, by the Chief Trial Examiner, or by the Regional Director. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. Such hearings shall be public, unless otherwise ordered by the Trial Examiner.

Sec. 24. It shall be the duty of the Trial Examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence.

Sec. 25. Any party to the proceeding shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

Sec. 26. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

Sec. 27. In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

Sec. 28. Any objection with respect to the conduct of the hearing, including any objection to the introduction of  
67 evidence, shall be stated orally, together with a short statement of the grounds of such objection, and included in the stenographic report of the hearing. No such objection shall be deemed waived by further participation in the proceeding.

Sec. 29. Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. The parties shall be entitled to file briefs or written statements only with permission of the Trial Examiner.

Sec. 30. In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice.



Sec. 31. Contemptuous conduct at any hearing before a Trial Examiner or before the Board shall be ground for exclusion from the hearing. The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall be ground for the striking out of all testimony previously given by such witness on related matters.

#### **Intermediate Report and Transmission of Case to the Board**

Sec. 32. After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report, which he shall file with the Regional Director issuing the complaint, who will thereafter transmit the original of the Intermediate Report to the Board in Washington, D. C., and cause a copy thereof to be served upon each of the parties to the proceeding. Such report shall contain (a) findings of fact, separately stated and numbered, and (b) recommendations as to what disposition of the case should be made, which may include, if it be found that respondent has engaged in or is engaging in the alleged unfair labor practice, a recommendation as to what affirmative action should be taken by respondent to bring about a condition in harmony with the law.

Sec. 33. Thereafter the Regional Director issuing the complaint shall forward to the Board in Washington, D. C., the charge, complaint, amended complaint, notice of hearing, answer amended answer, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the Intermediate Report and exceptions, shall constitute the record in the case.

#### **Exceptions to the Record and Intermediate Report.**

Sec. 34. If any party desires to take an exception to the Intermediate Report or to any other part of the record  
68 (including rulings upon all motions or objections) he shall within ten days from the date of service of the Intermediate Report file with the Board at Washington, D. C., four copies of a statement in writing setting forth such exceptions. Immediately upon the filing of the statement of exceptions the party filing the same shall serve a copy thereof upon each of the other parties to the proceeding. Upon proper



cause shown, the Board may extend the period within which to file a statement of exceptions.

Sec. 35. No matter not included in a statement of exceptions may thereafter be objected to before the Board, and failure to file a statement of exceptions shall operate as submission of the case to the Board on the record and the Intermediate Report.

### Procedure Before the Board

Sec. 36. Where the Trial Examiner has found in his Intermediate Report that the respondent has engaged in or is engaging in unfair labor practices affecting commerce, the Board may, upon the expiration of the period for filing a statement of exceptions, as provided in Section 34 of this Article, decide the matter forthwith upon the record, or after the filing of briefs, or oral argument, or may reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board or other agent or agency, or may make other disposition of the case. The Board shall notify the parties of the time and place for any such submission of briefs, oral argument, or taking of further evidence.

Where the Trial Examiner has found in his Intermediate Report that the respondent has not engaged in and is not engaging in unfair labor practices affecting commerce, and no exceptions have been filed within the period for filing a statement of exceptions; as provided in Section 34 of this Article, the case shall be considered closed. The Board may, upon motion made within a reasonable period and upon proper cause shown, reopen the record for further proceedings in accordance with this Section.

Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto—

(a) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

69 (c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

Sec. 38. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 37 of this Article, the Board may—

(a) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 36, inclusive, of this Article shall in so far as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(b) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(c) reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board, or other agent or agency; or

(d) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument, or taking of further evidence.

### Article III

#### Procedure Under Section 9 (c) of the Act for the Investigation and Certification of Representatives

Section 1. A petition requesting the Board to investigate and certify under Section 9 (c) of the Act the name or names of the representatives designated or selected for the purpose of collective bargaining may be filed by any employee or any person or labor organization acting on his behalf (hereinafter

referred to as the "petitioner"). Except as provided in Section 10 of this Article, such petition shall be filed with 70 the Regional Director for the Region wherein the contemplated bargaining unit exists, or, if the contemplated bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Such petition shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of the petition shall be filed. A blank form for filing such a petition will be supplied by the Regional Director upon request.

Sec. 2. Such petition shall contain the following:

- (a) The name and address of the petitioner.
- (b) The name and address of the employer or employers involved, the general nature of their businesses, and the approximate number of their employees.
- (c) A description of the bargaining unit claimed to be appropriate, the approximate number of employees therein, the number and classifications of employees which the representatives on whose behalf the petition is filed claim to represent, the names of any other known individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit.
- (d) A brief statement setting forth the nature of the question or controversy affecting commerce that has arisen concerning representation.

(e) Any other relevant facts.

Sec. 3. If it appears to the Board that an investigation should be instituted it shall so direct and (except as provided in Section 10 of this Article) shall authorize the Regional Director to undertake such investigation, and to provide for an appropriate hearing upon due notice, either in conjunction with a proceeding instituted pursuant to Section 5 of Article II of these Rules and Regulations, or otherwise. The Regional Director shall thereupon proceed with such investigation and in connection therewith shall prepare and cause to be served upon the petitioners, upon the employer or employers involved, and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation (all of whom are hereinafter referred to as "the parties to the proceeding"), a notice of hearing upon the question of representation before

a Trial Examiner at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

Sec. 4. All matters relating to motions, interventions, witnesses, and subpoenas shall be governed by the provisions of sections 14 to 22, inclusive, of Article II of these Rules and Regulations.

71 Sec. 5. The hearing upon the question of representation shall be conducted by a Trial Examiner specially designated by the Board, by the Chief Trial Examiner, or by the Regional Director, and shall be open to the public unless otherwise ordered by the Trial Examiner. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. It shall be the duty of the Trial Examiner to inquire fully into the question of representation. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence.

Sec. 6. The introduction of evidence at the hearing and the rights of the parties to the proceedings shall be governed by Sections 25 to 31, inclusive, of Article II of these Rules and Regulations.

Sec. 7. Upon the close of the hearing the Regional Director shall forward to the Board in Washington, D. C., the petition, notice of hearing, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which shall constitute the record in the proceeding.

Sec. 8. The Board shall thereupon proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or after further hearing, as it may determine, to certify to the parties to the proceeding the name or names of the representatives that have been designated or selected, or to direct a secret ballot of the employees in order to complete the investigation, or to make other disposition of the matter.

Sec. 9. Where the Board determines that a secret ballot should be taken it shall direct such ballot to be conducted by a designated agent upon such terms as it may specify. Upon conclusion of such ballot the agent conducting the ballot shall prepare an Intermediate Report containing a tally of the ballots, his findings and recommendations, which he shall cause to be served upon the parties to the proceeding. Within five days thereafter the parties to the proceeding may file with

the Regional Director any objection to the ballot or the Intermediate Report. If it appears to the Regional Director that any such objection raises a substantial and material issue with respect to the conduct of the ballot he shall issue and cause to be served upon the parties a notice of hearing on said objections before a Trial Examiner. Said Trial Examiner shall consider such objections raised to said ballot and shall prepare and file with the Regional Director a report containing findings and recommendations with respect thereto. Thereafter the Regional Director shall forward to the Board in Washington, D. C., the Intermediate Report of the agent conducting the ballot, the objections filed thereto, the notice of hearing, motions, rulings, orders, the stenographic report

72 of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article. If no objection raising a substantial and material issue with respect to the conduct of the ballot is filed to the Intermediate Report of the agent conducting the ballot the Regional Director shall forward directly to the Board in Washington, D. C., the Intermediate Report, which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article.

Sec. 10. Whenever the Board deems it necessary in order to effectuate the purpose of the Act, it may—

(a) permit a petition requesting an investigation and certification to be filed with it, and may upon the filing of such petition proceed to conduct an investigation under Section 9 (c) of the Act, or direct any Regional Director, or other agent or agency, to conduct such an investigation; or

(b) upon its own motion conduct, or direct any member, Regional Director, or other agent or agency to conduct an investigation under Section 9 (c) of the Act; or

(c) at any time after a petition has been filed with a Regional Director pursuant to Section 1 of this Article, order that such petition, and any proceeding which may have been instituted in respect thereto—

(1) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(2) be consolidated, for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same Region; or



(3) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in such other Region, or for any other purpose.

The provisions of this Article shall, insofar as applicable, apply to proceedings conducted pursuant to subsections (a), (b), and (c) (1) of this Section, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board, or by the Regional Director, or other agent or agency, directed to conduct the investigation. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to subsection (c) (3) of this Section, the provisions of this Article shall apply to such proceeding as if the Board had originally directed that the investigation be conducted in the Region to which the transfer is made.

#### Article IV

##### Designation of Regional Directors, Examiners, and Attorneys as Agents of the Board

Section 1. All Regional Directors now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigations, in accordance with Section 9 (c) of the Act.

(c) To issue and cause to be served complaints, to amend complaints, and to conduct hearings upon such complaints, in accordance with Section 10 (b) of the Act.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Sec. 2. All Examiners now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees), in accordance with Section 9 (c) of the Act.



(c) To have access to and the right to copy evidence, and to administer oaths and affirmations, in accordance with Section 11 (1) of the Act.

Sec. 3. All Attorneys now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigation, in accordance with Section 9 (c) of the Act.

(c) To amend complaints issued under Section 10 (b) of the Act and to conduct hearings upon complaints issued in accordance with Section 10 (b) of the Act.

74 (d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Sec. 4. The foregoing designations shall not be construed to limit the power of the Board to make such special designation of agents as may in its discretion be necessary or proper to effectuate the purposes of the Act.

## Article V

### Service of Papers

Section 1. Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

Sec. 2. Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

## Article VI

### Certification and Signature of Documents

Section 1. The Secretary of the Board, or in the event of his absence or disability, the Assistant Secretary of the Board, shall certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time.

Sec. 2. The Secretary of the Board, or in the event of his absence or disability, the Assistant Secretary of the Board, is hereby authorized to sign all orders of the Board, and sign and issue all complaints authorized to be issued by the Board.

## Article VII

### Construction of Rules

Section 1. These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the Act.

## Article VIII

### Amendments

Section 1. Any rule or regulation may be amended or rescinded by the Board at any time.

## Appendix.

### National Labor Relations Act

(48 Stat. 449)

### An Act

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### Findings and Policy

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages,

hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

**Definitions.****Sec. 2. When used in this Act—**

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of

commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133<sup>1</sup> approved June 14, 1935.

### National Labor Relations Board.

Sec. 3 (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

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<sup>1</sup> So in original.

79 (b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of \$10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for, by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individual for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board



in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid 80 on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Sec. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

### **Rights of Employees.**

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 .

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of

employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

81 (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

### Representatives and Elections.

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due

notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain<sup>1</sup> such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

#### Prevention of Unfair Labor Practices.

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the

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<sup>1</sup> So in original.

said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

83 (e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such tempo-

rary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit courts of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought  
84 may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the



Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

### Investigatory Powers

Sec. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such



attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same

fees as are paid for like services in the courts of the United States.

86 (5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

### Limitations.

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

87

**RETURN RECEIPT.**

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card.

A. A. of I. S. & T. W. of N. A.

(Signature or name of addressee)

T. F. Rich.

(Signature of addressee's agent)

Date of delivery, 5/27, 1937.

88

**BEFORE THE NATIONAL LABOR RELATIONS BOARD.**

• • (Caption—XIII-C-80) • •

**MOTION.**

(Board Exhibit 1-C).

To: Leonard C. Bajork, Esq. Regional Director for the Thirteenth Region.

Now comes Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, and respectfully moves that:

(a) The time for filing its answer to the Complaint in the above entitled proceeding be extended to and including June 7, 1937; and

(b) The date of hearing upon said Complaint be adjourned from June 7, 1937, the date specified in the notice, for a period of at least ten (10) days.

In support of the foregoing motion, the respondent represents as follows:

1. On February 17, 1937, a group of employees of the respondent, dominated by a number of men named in  
89 Paragraph 8 of the Complaint, and acting at the instigation and under the direction of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, forcibly evicted from the plant of the respondent at North Chicago, Illinois, the officers and agents of the respondent and the employees not associated with them in their violence, and by force and arms seized two important buildings owned by the respondent and forming part of its

plant and barricaded themselves in such buildings refusing to leave and refusing to permit the respondent's officers and representatives to enter therein. Thereupon, on the 18th day of February, 1937, proceedings were instituted by the respondent in the Circuit Court of Lake County, Illinois, to compel the restoration of its plant and the removal of said persons from possession thereof and to enjoin the continuance of violence. After due notice and upon full hearing, an injunctive order was entered on February 18, 1937, requiring the restoration of the seized portions of the plant to the respondent and restraining violence and other illegal acts. The persons so occupying the premises refused to comply with such court writ when served by the Sheriff of Lake County, Illinois, and thereupon, upon application of the respondent, a writ of attachment was issued against the persons occupying said premises, including a substantial number of those named in Paragraph 8 of the Complaint herein, requiring the Sheriff of Lake County, Illinois, to arrest such persons and bring them before the bar of that court. The Sheriff and a large number of his deputies endeavored to enforce such writ but the persons so unlawfully occupying the plant resisted the Sheriff with violence. Thereafter, the Sheriff made another effort to enforce the writ and succeeded in removing the persons from the plant.

2. Thereupon, said persons, and certain others engaged in assisting them in their unlawful conduct, were cited by the Circuit Court of Lake County to show cause, if any they had, why they should not be held in contempt of that court for violating its injunctive orders and interfering with the execution of its regular process. Various proceedings in connection with such citation have heretofore been held and the final hearing upon the contempt proceedings has been set before the Circuit Court of Lake County, Illinois, on June 2, 1937, such date having been fixed prior to the issuance of the Complaint in this proceeding.

3. The hearing upon respondent's application for a final decree and permanent injunction was also heretofore, and prior to the filing of the Complaint herein, set for hearing in the aforesaid court on June 2, 1937.

4. The preparation for the aforementioned judicial hearings will require the constant time and attention of counsel for the company and its principal officers between the date hereof and the date of the hearing. It is also expected that

said hearing will require several days, the exact number of which is now impossible to estimate, and will require the attendance of such counsel and officers and a large number of employees of the respondent. In addition, many persons whose testimony will be required at the hearing upon the above entitled Complaint will be detained at such judicial hearing.

5. The Complaint filed in the above proceeding comprehends a large number of different matters, the evidence in connection with which will require substantial preparation and the locating and interviewing of a large number of witnesses.

Wherefore, respondent respectfully prays that its aforementioned applications may be duly granted.

Fansteel Metallurgical Corporation,  
By R J Aitchison,

*President.*

State of Illinois, }  
County of Cook. } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President and duly authorized representative of Fansteel Metallurgical Corporation; that he is familiar with the matters and things set out in the above and foregoing motion and that the same are true in all respects.

R. J. Aitchison,

Sworn To and subscribed before me this 27th day of May, A. D. 1937.

(Seal)

Varian M. Bates,  
*Notary Public.*

93      **BEFORE THE NATIONAL LABOR RELATIONS BOARD.**  
         \* \* (Caption—XIII-C-80) \* \*

**AFFIDAVIT IN SUPPORT OF RESPONDENT'S MOTION FOR EXTENSION OF TIME TO ANSWER AND ADJOURNMENT OF DATE OF HEARING.**

(Board Exhibit 1-D.)

State of Illinois, )  
County of Cook. ) ss.

**MAX SWIREN**, being first duly sworn, on oath deposes and says that:

1. He is a member of the firm of Levinson Becker Peebles & Swiren, general counsel for Fansteel Metallurgical Corporation, the respondent in the above entitled proceeding.

2. On February 17, 1937, two of the buildings of the North Chicago plant of the respondent were violently seized, as set out in the respondent's motion. From the date of such seizure, February 17, 1937, until the date hereof, all of the legal matters arising out of such violent seizure have been handled exclusively by affiant and Harold M. Keele, associated with affiant's firm, and Sidney H. Block, of Waukegan, Illinois, who received only assistance from  
94 time to time with respect to research and other details from junior associates of affiant's firm. None of the partners or associates of affiant's firm, other than Harold M. Keele and affiant, are sufficiently conversant with the matters and things involved in the litigation pending in the Circuit Court of Lake County, Illinois, as set out in respondent's motion, or in the above entitled proceedings, to prepare or handle the same without undue prejudice to the rights of the respondent.

3. On May 19, 1937, which was one week prior to the issuance or receipt of the complaint in this case and two days prior to the date of the charges upon which the complaint is based, the proceedings in the Circuit Court of Lake County, Illinois, which had been pending since February 18, 1937, were set for final hearing upon the application of respondent for a permanent injunction and the disposition of the



rules to show cause why certain persons should not be held in contempt, and other matters in connection therewith. Such matters were set for hearing on June 2, 1937, in the courthouse at Waukegan, Illinois, said matters having been previously continued on several occasions on application of the defendants and over the protest of affiant and his associates on behalf of the respondent. Said hearing will require and involve the testimony of approximately 150 to 200 witnesses in addition to documentary evidence and the consideration of legal arguments. In order adequately to prepare for such hearing, it has been necessary for all of said  
95 counsel, including affiant together with several junior associates of affiant's firm, to devote substantially all of their time to the preparation for said hearing, the interviewing of witnesses and the briefing of legal questions, and such preparation must necessarily continue until the date of the hearing. By reason of the large number of witnesses involved and the numerous and complicated issues to be presented, it will be necessary, for the due protection of respondent's interests, that said hearing before the Circuit Court of Lake County be attended by affiant and said Harold M. Keele and Sidney H. Block, and that during the progress of said hearing said junior associates of affiant's firm continue to render assistance in connection with matters arising during the hearing. By reason of the matters and things set out above, affiant verily believes that the afore-described hearing before the Circuit Court of Lake County, Illinois, will require full daily hearings for at least one week.

4. The aforementioned affiant and Harold M. Keele and Sidney H. Block are the only attorneys sufficiently familiar with the matters and things involved in the above entitled matter to enable them to permit the proper defense and protection of respondent's interests at the hearing upon the complaint in this proceeding. In order properly to prepare for the hearing on said complaint, including the interviewing of witnesses estimated in number at approximately 100, and the preparation of legal briefs involving varied and  
96 novel questions of law, it will be necessary for affiant and said Harold M. Keele and Sidney H. Block, assisted by junior associates of affiant, to devote at least ten days to the preparation of respondent's case. The hearing in the above entitled cause has now been set for June 7, 1937, which is only five days subsequent to the aforementioned hearing before the Circuit Court of Lake County, Illinois, and will

inevitably fall on a day during which said hearing in Lake County will be in progress and before respondent's counsel above mentioned will have been afforded an adequate opportunity to prepare respondent's case.

5. All of the matters and things charged in the complaint are alleged to have occurred more than two months prior to the filing of the charge or issuance of the complaint and in many instances as much as seven months prior to such dates. The granting of respondent's motion, which is essential for the adequate preparation and presentation of its case in the above entitled cause, would result in a hearing less than thirty days after the filing of the charge upon which the complaint is based and would constitute expeditious hearing.

6. The granting of the motion of the respondent would in no respect prejudice any of the persons involved in this proceeding and a denial of the motion will, by reason of the matters and things set forth above, deny to the respondent the benefits and protection of the due process provisions of the Constitution of the United States.

Max Swiren,  
*Affiant.*

Sworn To and subscribed before me this 28th day of May,  
A. D. 1937.

(Seal) Varian M. Bates,  
*Notary Public.*

98 BEFORE THE NATIONAL LABOR RELATIONS BOARD.  
• • (Caption—XIII-C-80) • •

### ORDER.

(Board Exhibit 1-E.)

This cause came on to be heard before Leonard C. Bajork, Acting Regional Director, Thirteenth Region, National Labor Relations Board, on the motion of the respondent and affidavits in support thereof, and upon due consideration thereof the said Acting Regional Director finds that the motion for leave to extend the filing of respondent's answer should be granted in part and the motion to adjourn the date of hearing from June 7, 1937 for a period of ten days should be denied. It is accordingly

Ordered that the motion of the respondent to extend the time for filing its answer to the complaint be and the same is hereby granted and the time for filing respondent's answer to said complaint is extended to June 4, 1937.

It Is Further Ordered that the motion of the respondent to adjourn the date of hearing upon said complaint be and the same is hereby denied.

Leonard C. Bajork,  
*Acting Regional Director Thirteenth  
Region.*

Dated at Chicago, Illinois this 29th day of May, 1937.

99 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

\* \* (Caption—XIII-C-80) \* \*

ANSWER OF FANSTEEL METTALLURGICAL  
CORPORATION.

(Board Exhibit 1-F.)

Now comes Fansteel Metallurgical Corporation, the respondent in the above entitled proceeding, and makes answer to the complaint filed herein by the National Labor Relations Board, and says that:

1. The allegations in Paragraphs 1 and 2 of the complaint are admitted, but respondent avers that all of its manufacturing operations are carried on wholly within the State of Illinois and are entirely intrastate in character. None of the persons listed in Paragraphs 8 and 11 of the complaint were employed by the respondent except in such intrastate manufacturing operations.

2. Respondent has no knowledge with respect to the matters and things set out in Paragraph 3 of the complaint and therefore calls for strict proof thereof.

3. Respondent denies the allegations of Paragraph 4 100 of the complaint. Respondent avers that by reason of the character of the work performed and the prevailing and accepted practice at respondent's plant in North Chicago, Illinois, and in Lake County, Illinois, generally, persons performing maintenance services have, for many years, organized and bargained collectively along individual craft lines, and many of the maintenance employees of respondent were

at the several times mentioned in the complaint, and for a long period of time prior thereto, members of individual craft unions. By reason of the foregoing, the inclusion of maintenance workers in the production workers' unit would tend to defeat rather than to effectuate the purposes and policies of the National Labor Relations Act, and an appropriate unit for the purposes of collective bargaining of the production workers employed by the respondent should exclude maintenance workers, who can be replaced by independent contractors and whose services are not essential for successful production and the operation of the respondent's business.

4. Respondent denies each and all of the allegations of Paragraph 5 of the complaint. Respondent avers that neither on September 10, 1936, nor prior to that time, nor at any time since that date, did a majority of the employees employed by the respondent in production, or a majority of the employees employed by the respondent in production and maintenance, authorize or designate the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66 (hereinafter called the "Steel Union") as the representative of such employees for the purpose of collective bargaining with respondent. Respondent further avers that in a large number of instances, employees of respondent 101 were compelled, by harassment, coercion, intimidation, threats and other forms of duress, to execute cards purporting to apply for membership in the Steel Union and purporting to authorize the Steel Union to act for such employees in collective bargaining with the respondent; that all such authorizations and memberships so obtained by duress, in any form, are null and void and confer no right or authority upon the Steel Union. Respondent further avers that the Rare Metal Workers of America, Local No. 1, a labor organization organized as a corporation under the laws of the State of Illinois, is now, and for some time past has been, the duly authorized representative of approximately ninety per cent of the employees of respondent employed in production, and by reason of its representation of more than a majority of such employees is, under the terms of Section 9(a) of the National Labor Relations Act, the exclusive representative of all employees employed in such work for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and respondent has been, and is now, engaged in bar-

gaining collectively with said labor organization with respect to such matters.

5. Respondent denies the allegations contained in Paragraph 6 of the complaint and further denies that it has at any time engaged, or is now engaging, in any unfair labor practices as defined by Section 8, Subdivision (5) of the National Labor Relations Act.

6. Respondent denies each and all of the allegations contained in Paragraph 7 of the complaint, and avers that:

102 (a) At no time prior to April, 1937, did the respondent enter into any contract or arrangement with the National Metal Trades Association either for the purposes set out in Paragraph 7 of the complaint or for any other purpose whatsoever.

(b) On or about August 17, 1936, respondent did, through the National Metal Trades Association, engage Alfred Johnstone for the purpose of working in the respondent's plant and observing and reporting upon all matters coming to his attention respecting plant production, efficiency of plant supervision, efficiency of tool and machine equipment, the morale of employees, shop working conditions, and all other factors reflected in the prevailing rate of production. Said Johnstone continued in the employ of respondent until December 7, 1936, and respondent did not, either through Johnstone or anyone else, at any time interfere with, restrain or coerce any of its employees in the exercise of their rights guaranteed by the National Labor Relations Act. All of the allegations of the complaint that the said Johnstone was employed for any purpose other than the purposes hereinbefore expressly set forth, and all of the allegations of the complaint that the said Johnstone, in the scope of his employment by the respondent, took an active part in the work of the Steel Union, are specifically denied.

(c) On September 8, 1936, A. J. Anselm resumed his position as Plant Superintendent of the respondent for the purpose of managing and supervising the production and operations of respondent's plant and for no other purposes  
103 whatsoever. Said A. J. Anselm has been employed continuously by the respondent and its subsidiary or affiliated companies since February, 1919, serving for more than thirteen years as Plant Superintendent until 1932, at which time he resumed the duties of technical sales engineer for respondent's principal subsidiary. Said A. J. Anselm was returned to the position of Plant Superintendent shortly after that posi-



tion became vacant as a result of the advancement of the Plant Superintendent to the position of Vice-President of the company.

(d) On or about November 11, 1936, John Kondrath was transferred from the machine shop to the development laboratory of the master mechanic to assist in the development and improvement of machines and machine parts required in the production units of respondent. Respondent denies that said Kondrath was forbidden to associate or talk with any of the employees of the respondent, and further avers that neither said Kondrath nor anyone else was heretofore authorized to engage in any activities in respondent's plant and upon the respondent's property for the purpose of organizing or soliciting memberships for the Steel Union.

(e) Neither at the time of the restoration to the respondent of the buildings forming part of its plant, which had been seized and retained by violence at the instigation of the Steel Union, nor at any other time, did the respondent or anyone authorized to act on its behalf impose, or seek to impose, as a condition of reinstatement or reemployment of any of the employees or former employees of the respondent, the waiver or abandonment of any rights guaranteed by the National Labor Relations Act or by any other statute. Respondent 104 denies that it at any time engaged in any acts whether as set forth in Paragraph 7 of the complaint or otherwise, constituting unfair labor practices within the meaning of Section 8, Subdivision (1) of the National Labor Relations Act.

7. Respondent denies each and all of the allegations contained in Paragraph 8 of the complaint, and avers that:

(a) On February 17, 1937, certain employees of the respondent, acting at the instigation of, and in pursuance of a conspiracy with, the Steel Union and certain of its agents and organizers, with force and violence evicted the officers, agents and other employees of the respondent from its plant at North Chicago, Illinois, and with force and violence seized and barricaded themselves in two key buildings forming part of such plant. Thereupon, the respondent, acting through its duly authorized officers and agents, demanded of such persons that they forthwith relinquish possession of the respondent's property and leave the plant, which request was refused by said persons who remained behind locked doors in said buildings and refused admittance thereto to the respondent's duly authorized officers and agents. Upon the refusal of such employees who had so seized and retained possession of the two



buildings, as aforesaid, to vacate the buildings as directed by the respondent and to permit the respondent's officers and agents to enter therein, the respondent announced, on the evening of February 17, 1937, approximately four hours following such violent seizure, that all employees thus holding the unauthorized and unlawful possession of said buildings were discharged from their employment with the respondent.

105 Said discharge was made only after, and solely by reason of, the aforementioned violence and violent and unlawful seizure and retention of the two key buildings of respondent's plant, and for no other reason whatsoever.

(b) Respondent denies that on February 17, 1937, or on any other date, it discharged any of the persons named in Paragraph 8 of the complaint, or any other persons, by reason of membership in the Steel Union or in any other union or by reason of lawful concerted activities for the purpose of collective bargaining or by reason of lawful concerted activities for other mutual aid and protection. Respondent further avers that the only persons named in Paragraph 8 of the complaint who were discharged by the respondent were those who had participated in the violent seizure and unlawful retention of possession of respondent's property, as hereinbefore set forth, and who were discharged, as hereinbefore set forth, solely by reason of such violence and unlawful conduct and for no other reason whatsoever.

(c) Respondent avers that Jasper Leskovec was temporarily laid off and worked last for the respondent on November 25, 1936, and was finally discharged for inefficiency, and for no other reason, on January 26, 1937.

8. Respondent denies each and all of the allegations contained in Paragraph 9 of the complaint. Respondent specifically denies that W. D. Crump, referred to in said paragraph, was at any time discharged by the respondent; respondent avers that since February 17, 1937, said Crump has voluntarily absented himself from the plant and employ of the

106 respondent. Respondent avers that Art Holm, Sr. was discharged by the respondent as one of its foremen by reason of insubordination, inefficiency and the commission of acts contrary to his authority and instructions, and said Holm was at no time suspected of membership in the Steel Union. Respondent further avers that it understood and believed at the time of said discharge that foremen were not eligible for membership in the Steel Union, and the discharge of said Art Holm, Sr. was not made in the belief or suspicion that said

Holm was either a member of, or in any way connected with, the Steel Union.

9. Respondent denies each and all of the allegations and the conclusions of Paragraph 10 of the complaint, and specifically denies that it discriminated against any of its employees, or discharged any of its employees by reason of, or that it discouraged, membership in the Steel Union, or in any other union activity, and further denies that it has in any way engaged in any unfair labor practices within the meaning of Section 8, Subdivision (3) of the National Labor Relations Act.

10. Respondent denies each and all of the allegations of paragraph 11 of the complaint, and specifically denies that either on February 27, 1937, or at any other time, the respondent refused or failed to reinstate to their regular positions of employment any of its employees or former employees, whether or not named in Paragraph 11 of the complaint, for the reason of their membership in the Steel Union or that they engaged in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. Respondent further avers that:

107 (a) On February 18, 1937, respondent presented its complaint to the Circuit Court of Lake County, Illinois, setting out the seizure and retention of possession, by force and violence, of the aforementioned two buildings of respondent's plant by certain employees of respondent acting at the instigation of, and in conspiracy with, the Steel Union and its officers, agents and organizers, and prayed that appropriate injunctive relief might be granted to restore said property to the possession of the respondent as its lawful owner. Upon such complaint and pursuant to due notice and upon full hearing, said Circuit Court of Lake County, Illinois, did, on February 18, 1937, enter a temporary injunction requiring that individual defendants (substantially all of whom are named in Paragraphs 8 and 11 of the complaint) and the Steel Union and its members and agents, cease and desist from occupying or possessing any portion of the plant or properties of the respondent and vacate and remove from such premises at once and otherwise cease and refrain from unlawfully interfering with the respondent's possession of its plant and property and the regular conduct of respondent's business. Upon service of the writ of injunction issued pursuant to such order, said discharged employees, still acting under the direction and in conspiracy with the Steel Union, refused to comply with the court writ and defied the law enforcement officers of

the County. Thereafter, a writ of attachment duly issued from the Circuit Court of Lake County, Illinois, directing that the Sheriff of said county arrest the persons named therein and all other persons so unlawfully retaining possession of respondent's property, and bring them before the Bar of said

Circuit Court to show cause, if any they had, why they should not be punished for contempt of that court in failing to comply with its writ of injunction. On February 19, 1937, the duly constituted Sheriff of Lake County, Illinois, endeavored to execute and enforce said attachment writ and was prevented from so doing by the resistance, with force and violence, by the persons so unlawfully occupying the premises of the respondent. Such persons continued to retain unlawfully and with force and violence possession of respondent's plant buildings until the morning of February 26, 1937, when they were evicted from the premises by the Sheriff of Lake County, Illinois, while executing the aforementioned writ of injunction and writ of attachment. On the last mentioned date, the persons so unlawfully occupying the premises of the respondent, and other members and agents of, and sympathizers with, the Steel Union, acting in concert and conspiracy with the Steel Union, resisted and interfered with, by force and violence, the enforcement of said writs of injunction and attachment by the Sheriff of Lake County. All of the persons named in Paragraph 11 of the complaint (other than those specifically hereinafter referred to in Subdivisions (b), (d) and (e) of this Paragraph 10 of this answer) actively participated in the aforementioned violent and unlawful seizure and retention of respondent's property, the defiance of the Circuit Court of Lake County, Illinois, and the resistance, by force and violence, to the Sheriff's execution of said writs of injunction and attachment, or actively aided and abetted such persons in such violence and unlawful conduct in pursuance of a single purpose and conspiracy. By reason of their participation in the aforementioned violence and unlawful conduct, and by reason of the abolition of certain jobs in respondent's plant, but for no other reason whatsoever, respondent did not, upon the restoration of its plant on February 26, 1937, offer to reinstate or reemploy the following persons:

Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Edward Brunke, Al Bunton, Jerome Camernick, Jr., Ted Christiansen, Joseph Chudy, Lester Crump, W. D. Crump, John Cudith, Jr., Leo P. Daluga, Vincent Dietmeyer,

Harold Dreyer, Raymond DuBois, Thomas E. Fagan, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, Phil Graimer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Joseph Hoff, Art Holm, Jr., John W. Jackoway, Oscar Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joe Lima, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovec, Nate Mogel, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis, John Praski, Merritt Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry H. Rayner, Joseph Richveis, Andrew Rode, Arvo Romppaine, Alvar Romppaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Luther Small, John Starovich, Carl A. Swanson, Jack Taylor, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yaeger, Frank Zelenick and Mike Zelenick.

(b) Respondent further avers that it affirmatively requested the following persons named in Paragraph 11 of the complaint to return to work and resume their duties and that they refused so to do:

Robert Brown, Gus Canelakes, Clarence Dreyer, Herman Latz, Otto Latz, Eric Lindberg, George Mondro, Frank Moxey, Isabelle Recktenwald, Robert Pratt, Edward Schuman, Peter Skarbalus and George W. Smith.

(c) Respondent further avers that upon the resumption of operations on or about February 27, 1937, the respondent did, for purposes of efficiency and economy of operation, abolish forty-three positions, among which were positions which had previously been occupied by a number of the persons named in Paragraph 11 of the complaint, and the elimination of such positions, together with the participation of the persons 110 formerly employed in such positions in the aforementioned violence and unlawful conduct, were the sole reasons for failing to offer reinstatement or reemployment to such persons.

(d) The following persons named in Paragraph 11 of the complaint were not rehired or reinstated upon resumption of operations of the respondent solely and exclusively by reason of their inefficiency to perform the duties required of such employees in respondent's employment:

Joan Bissonnette, Virginia Butterfield, Frances Fellens, Fern Gartley, Evelyn Gramer, Vivienne Johnson, Elizabeth Luczo, Tillie Mesec and Marguerite Siefert.

(e) Jasper Leskovec and Art Holm, Sr. were properly discharged for cause, as hereinbefore set forth, and respondent was under no duty to reinstate or reemploy such persons.

Respondent avers that its failure to rehire or reinstate any employees or former employees was in no respect motivated by their membership in the Steel Union or in any other union or their participation in lawful concerted efforts for the purpose of collective bargaining or other mutual aid or protection or by reason of any other lawful conduct.

11. Respondent denies each and all of the allegations and conclusions of Paragraph 12 of the complaint.

12. Respondent denies each and all of the allegations of Paragraph 13 of the complaint.

(a) Respondent specifically denies that it at any time attempted to organize a company union, whether as set out 111 in Paragraph 13 of the complaint or otherwise, and further denies that it at any time threatened any of its employees with loss of employment for failure to join in such union.

(b) Respondent avers that Rare Metal Workers of America, Local No. 1 (herein called "Rare Metal Union") is a bona fide labor organization organized and existing under the corporation laws of the State of Illinois, and that respondent has had no connection in any way with its organization, conduct or maintenance. Respondent specifically denies (1) that it caused Rare Metal Union to be organized, (2) that it dominated or interfered with the formation of, or solicitation of members for, the Rare Metal Union, and (3) that it threatened any employees with loss of employment or other penalty for failure to join the Rare Metal Union or that it contributed any financial or other support to the Rare Metal Union.

(c) Respondent denies that it engaged in any acts whether as set forth in Paragraph 13 of the complaint or otherwise, for the intent or purpose, or having the effect, of restraining, coercing or interfering with the exercise by any of its employees of rights guaranteed by Section 7 of the National Labor Relations Act, or that it engaged in any unfair labor practices within the meaning of Section 8, Subdivision (2) of that act.

13. Respondent denies each and all of the allegations of Paragraph 14 of the complaint. Respondent avers that the normal operations and business of the respondent were 112 interfered with and prevented solely by the violent and



unlawful seizure of its property, as hereinbefore recited, and further avers that such violent and unlawful seizure and retention of respondent's property was effected at the instigation of the Steel Union for the purpose of forcibly compelling the respondent to enter into a closed shop-check-off system agreement with the Steel Union so as to require every employee of the respondent, as a condition of such employment, to become a member of, and to pay dues to, the Steel Union, and require the respondent to deduct such dues from the wages of such employees and transmit the same to the Steel Union.

14. Respondent denies each and all of the allegations and conclusions contained in Paragraph 15 of the complaint. Respondent denies that it committed any of the acts or engaged in any of the practices alleged in Paragraph 15 of the complaint, and further denies that it engaged in unfair labor practices within the meaning of Section 8, Subdivision (1) of said National Labor Relations Act.

15. Respondent denies each and all of the allegations and conclusions of Paragraphs 16 and 17 of the complaint.

16. Respondent avers that the Steel Union and its members and officers have endeavored for more than two months past to hinder, delay and interfere with the disposition of the aforementioned proceedings before the Circuit Court of Lake County, Illinois, wherein contempt citations against most of the persons named in Paragraphs 8 and 11 of the complaint, and against others, are now pending, and wherein an application for a permanent injunction is now pending, and respondent avers that the charges upon which the complaint in this proceeding is based were not filed in good faith but 113 are part and parcel of the efforts of the Steel Union to hinder, delay and interfere with the aforementioned court proceedings.

17. Respondent specifically denies each and all of the allegations of the complaint which are not in this answer specifically and expressly admitted.

Wherefore, respondent prays that the complaint in the above entitled proceeding may be dismissed.

Fansteel Metallurgical Corporation,  
By R. J. Aitchison,

*President.*

Levinson, Becker, Peebles & Swiren,  
*Counsel for respondent.*



State of Illinois }  
 County of Lake } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled proceedings; that in accordance with his due authority so to do, he has executed the above and foregoing answer for and in the name of Fansteel Metallurgical Corporation; that all of the matters and things set out in the above and foregoing answer are true in substance and in fact, except such matters as are alleged to be on information and belief and as to such matters affiant is informed and verily believes the allegations to be true.

R. J. Aitchison.

Sworn to and Subscribed Before Me this 2nd day of June, A. D. 1937.

(Seal)

Nona B. Long,  
 Notary Public.

135 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

\* \* (Caption—XIII-C-80) \* \*

# AMENDMENT TO ANSWER OF FANSTEEL METALLURGICAL CORPORATION.

(Board Exhibit 1-Q.)

By leave of the Trial Examiner first had and obtained, the respondent, Fansteel Metallurgical Corporation, does hereby amend its answer filed in the above entitled cause by striking out paragraph 10 thereof and inserting in lieu of said paragraph the following:

Respondent denies each and all of the allegations of paragraph 11 of the complaint, and specifically denies that either on February 27, 1937, or at any other time, the respondent refused or failed to reinstate to their regular positions of employment any of its employees or former employees, whether or not named in paragraph 11 of the complaint, for the reason of their membership in the Steel Union or that they engaged in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. Respondent further avers that:

(a) On February 18, 1937, respondent presented its complaint to the Circuit Court of Lake County, Illinois, setting out the seizure and retention of possession, by force and violence, of the aforementioned two buildings of respondent's plant by certain employees of respondent acting at the instigation of, and in conspiracy with, the Steel Union and its officers, agents and organizers, and prayed that appropriate injunctive relief might be granted to restore said property to the possession of the respondent as its lawful owner. Upon such complaint and pursuant to due notice and upon full hearing, said Circuit Court of Lake County, Illinois, did, on February 18, 1937, enter a temporary injunction requiring that individual defendants (substantially all of whom are named in paragraphs 8 and 11 of the complaint) and the Steel Union and its members and agents, cease and desist from occupying or possessing any portion of the plant or properties of the respondent and vacate and remove from such premises at once and otherwise cease and refrain from unlawfully interfering with the respondent's possession of its plant and property and the regular conduct of respondent's business. Upon service of the writ of injunction issued pursuant to such order, said discharged employees, still acting under the direction and in conspiracy with the Steel Union, refused to comply with the court writ and defied the law enforcement officers of the County. Thereafter, a writ of attachment duly issued from the Circuit Court of Lake County, Illinois, directing that the Sheriff of said county arrest the persons named therein and all other persons so unlawfully retaining possession of respondent's property, and bring them before the Bar of said Circuit Court to show cause, if any they had, why they should not be punished for contempt of that court in failing to comply with its writ of injunction. On February 19, 1937, the duly constituted Sheriff of Lake County, Illinois, endeavored to execute and enforce said attachment writ and was prevented from so doing by the resistance, with force and violence, by the persons so unlawfully occupying the premises of the respondent. Such persons continued to retain unlawfully and with force and violence possession of respondent's plant buildings until the morning of February 26, 1937, when they were evicted from the premises by the Sheriff of Lake County, Illinois, while executing the aforementioned writ of injunction and writ of attachment. On the last mentioned date, the persons so unlawfully occupying the premises of the respondent, and

other members and agents of, and sympathizers with, the Steel Union, acting in concert and conspiracy with the Steel Union, resisted and interfered with, by force and violence, the enforcement of said writs of injunction and attachment by the Sheriff of Lake County. All of the persons named in paragraph 11 of the complaint (other than the women and those specifically hereinafter referred to in Subdivisions (d) and (e) of this paragraph 10 of this amendment) actively participated in the aforementioned violent and unlawful seizure and retention of respondent's property, the defiance of the Circuit Court of Lake County, Illinois, and the resistance, by force and violence, to the Sheriff's execution of said writs of injunction and attachment, or actively aided and abetted such persons in such violence and unlawful conduct in pursuance of a single purpose and conspiracy. By reason of their participation in the aforementioned violence and unlawful conduct, by reason of their discharge for proper cause, and by reason of the abolition of certain jobs in the respondent's plant, respondent was not required upon the restoration of its plant on February 26, 1937 to offer to reinstate or reemploy the following persons:

Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Edward Brunke, Al Bunton, Jerome Camernick, Jr., Ted Christianson, Joseph Chudy, Lester Crump, W. D. Crump, John Cudith, Jr., Leo P. Daluga, Vincent Dietmeyer, Harold Dreyer, Raymond DuBois, Thomas E. Fagan, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlap, Angelo Galbavy, Phil Graimer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Art Holm, Jr., John W. Jackoway, Oscar Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joe Lima, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovac, Nate Mogel, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis. John Praski, Merritt Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry 138 H. Rayner, Joseph Richveis, Andrew Rode, Arvo Rommpaine, Alvar Rommpaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Luther Small, John Starovich, Carl A. Swanson, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yeager, Frank Zelenick and Mike Zelenick.

(b) Respondent further avers that it affirmatively requested the following persons named in paragraph 11 of the

complaint to return to work and resume their duties and that they refused so to do:

Roy Brown, Gus Canelakes, Clarence Dreyer, Herman Latz, Otto Latz, Eric Lindberg, George Mondro, Frank Moxey, Isabelle Recktenwald, Robert Pratt, Edward Schuman, Peter Skarbalus, George W. Smith, Arvo Romppaine, Luther Small, Paul Wells, John W. Jackoway, Evelyn Graimer, Fern Gartley, Vivienne Johnson, Marguerite Seifert, Tillie Mesec.

(c) Respondent further avers that upon the resumption of operations on or about February 27, 1937, the respondent did, for purposes of efficiency and economy of operation, abolish forty-three positions, among which were positions which had previously been occupied by a number of persons named in paragraph 11 of the complaint, and the elimination of such positions, together with the participation of the persons formerly employed in such positions in the aforementioned violence and unlawful conduct, were the sole reasons for failing to offer reinstatement or reemployment to such persons.

(d) The respondent was not obligated to rehire or reinstate the following persons named in paragraph 11 of the complaint by reason of their inefficiency to perform the duties required of such employees in respondent's employment:

Joan Bissonnette, Virginia Butterfield, Frances Fellens, Fern Gartley, Evelyn Graimer, Vivienne Johnson, Elizabeth Luczo, Tillie Mesec, Marguerite Seifert, and Joseph Hoff.

139 (e) Jasper Leskovec and Art Holm, Sr. were properly discharged for cause, as hereinbefore set forth, and respondent was under no duty to reinstate or reemploy such persons.

Jack Taylor was a temporary part time employee whose services were not required after the restoration and possession of the plant to the respondent, and he was not reemployed solely for that reason.

Respondent avers that its failure to rehire or reinstate any employees or former employees was in no respect motivated by their membership in the Steel Union or in any other union or their participation in lawful concerted efforts for the purpose of collective bargaining or other mutual aid or protection or by reason of any other lawful conduct.

Fansteel Metallurgical Corporation,

By R. J. Aitchison,

*President.*

Levinson Becker Peebles & Swiren,

*Counsel for respondent.*

State of Illinois }  
County of Lake. } ss.

R. J. Aitchison, being first duly sworn on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled proceedings; that in accordance with his due authority so to do, he has executed the above and foregoing amendment for and in the name of Fansteel Metallurgical Corporation; that all of the matters and things set out in the above and foregoing amendment  
140 are true in substance and in fact, except such matters as are alleged to be on information and belief and as to such matters affiant is informed and verily believes the allegations to be true.

R. J. Aitchison.

Sworn to and Subscribed Before me this 22nd day of June, 1937.

Nora B. Long,  
Notary Public.

(Seal)

115 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

\* \* (Caption—XIII-C-80) \* \*

APPLICATION FOR SUBPOENAS AND SUBPOENA  
DUCES TECUM.

(Board Exhibit 1-G.)

To: Leonard C. Bajork,  
Acting Regional Director of  
the Thirteenth Region,  
Chicago, Illinois.

Hearing upon the complaint in the above entitled proceeding has heretofore been set by the National Labor Relations Board to be held on the 7th day of June, 1937, at ten o'clock in the forenoon, Central Daylight Saving Time, at Room 4, New United States Post Office Building, Waukegan, Illinois. Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, hereby makes application for subpoenas for the attendance of witnesses at said hearing, and a subpoena duces tecum for the production of books, records,

correspondence and other documents at said hearing, as follows:

(1) Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Joan Bissonnette, Roy Brown, Edward Brunke, Al Bunton, Virginia Butterfield, Jerome Camernick, Jr., Gus Canelakes, Ted Christiansen, Joseph Chudy, Lester Crump, W. D. Crumb, John Cudith, Jr., Leo P. Daluga, Vincent 116 Dietmeyer, Clarence Dreyer, Harold Dreyer, Raymond Dubois, Thomas E. Fagan, Frances Fellens, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, Fern Gartley, Phil Graimer, Evelyn Gramer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Joseph Hoff, Art Holm, Sr., Art Holm, Jr., John W. Jackoway, Oscar Johnson, Vivienne Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Herman Latz, Otto Latz, Jasper Leskovec, Joe Lima, Eric Lindberg, Elizabeth Luczo, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovec, Tillie Mesec, Nate Mogel, George Mondro, Frank Moxey, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis, John Praski, Merritt Pratt, Robert Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry H. Rayner, Isabelle Recktenwald, Joseph Richveis, Andrew Rode, Arvo Rommppaine, Alvar Rommppaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Edward Schuman, Marguerite Siefert, Peter Skarbalus, Luther Small, George W. Smith, John Starovich, Carl A. Swanson, Jack Taylor, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yaeger, Frank Zelenick and Mike Zelenick.

The facts to be proven by such witnesses include (1) their activities prior to, and the circumstances surrounding, their failure to return to work at the plant of respondent, and the alleged discharge of each of them; (2) the seizure and retention by force and violence of respondent's plant, the defiance of the court orders of the Circuit Court of Lake County, Illinois, and the resistance to the Sheriff of Lake County, Illinois, in the execution of writs of injunction and attachment, all as set out in respondent's answer in these proceedings; and (3) the identity of the persons participating in such violence, court defiance and resistance to law enforcement officers.

(2) Andrew Bereczsky, Louis Bereczsky, Howard Bond, Wallace Bourdeau, Wilbert Braden, George Cerk, George Devine, John Germer, Ray Grossenheider, Gilbert Haney, Al-



bert Henning, Ralph Hoffman, Chester Hook, Stanley Janas, Chester Janas, Eino Johnson, Fred Karpinski, Frank Ludlow, Frank Nicholey, Frank Osenek, Casimir Petkus, John Plewa, Frank Ptak, Reginald Ross, Eric Schultz, Alf Simonson, Arthur Sladek, Milton Sladek, Orlin Swanson, Oscar Westerlund, Charles Smith, William Van Treek, Stanley Verenski, Cornelius Dugan and Victor Oliver.

The facts to be proven by such witnesses include the seizure and retention by force and violence of respondent's plant, the defiance of the court orders of the Circuit Court of Lake County, Illinois, the resistance to the Sheriff of Lake County, Illinois, in the execution of writs of injunction and attachment, all as set out in respondent's answer in these proceedings, and the identity of the persons participating in such violence, court defiance and resistance to law enforcement officers.

(3) Robert E. Pilkington.

The facts to be proven by said witness include the forcible retention of possession of buildings forming part of respondent's plant by a group of persons, including a number of the former employees of respondent listed in paragraphs 8 and 11 of the complaint, all as set out in respondent's answer in these proceedings, and other violence and threatened violence accompanying the alleged strike mentioned in the complaint.

(4) Subpoenas duces tecum directed to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, requiring the production at said hearing of all its minute records, books of account, check books, membership cards, books and lists, and all correspondence relating to the solicitation of members among employees of the respondent or relating to the participation of said

Lodge 66 or any of its officers, members or agents in the seizure on February 17, 1937, of Buildings 3 and 5 of respondent's plant and the retention thereof or maintenance of persons in occupancy of said buildings until February 26, 1937. The facts to be established by such evidence include (a) the names and total number of employees of respondent who at any of the times mentioned in the complaint held membership in said Lodge 66, and the status of such members from time to time from September 10, 1936, to the date hereof; (b) the nature and extent of the financing and the identity of the participants in the conspiracy to seize and retain part of the plant of the respondent, and otherwise to engage in violence,

which conspiracy is more fully referred to in respondent's answer; and (c) the employment or designation of persons engaged in violence against the respondent and employees of the respondent refusing to accept membership in said Local 66.

Reference is hereby made to the answer filed in these proceedings by the respondent, for the materiality of the above evidence.

Fansteel Metallurgical Corporation,  
By R. J. Aitchison,  
*President.*

Levinson Becker Peebles & Swiren  
*Counsel for respondent.*

119 State of Illinois, }  
County of Lake. } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled cause, and has executed the above application on its behalf; that the above and foregoing witnesses and evidence are necessary for the due presentation of the defense of the respondent and that the facts to be established by such witnesses and evidence are accurately and truly set out above.

R. J. Aitchison.

Sworn to and Subscribed Before Me this 3d day of June,  
A. D. 1937.

(Seal) Nora B. Long,  
*Notary Public.*

121 (Board Exhibit 1-H.)

## UNITED STATES OF AMERICA.

### NATIONAL LABOR RELATIONS BOARD.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner In the Matter of Fansteel Metallurgical Company and Local 66 of Amalgamated Association of Iron, Steel and Tin Workers of North America, Case No. XIII-C-80.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 4th day of June, A. D. 1937, at Washington, D. C.

(Seal)

Benedict Wolf  
*Secretary.*

122

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 3rd day of June, 1937.

Present:

Donald Wakefield Smith.  
Edwin S. Smith.

• • (Caption—XIII-C-80) • •

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Thirteenth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Tilford E. Dudley act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf  
Benedict Wolf  
*Secretary.*

*Order Denying Application.*

129

(Board Exhibit 1-O.)

## UNITED STATES OF AMERICA.

## NATIONAL LABOR RELATIONS BOARD.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Denying Application for Subpoenas and Subpoena Duces Tecum In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. XIII-C-80.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 11th day of June, A. D. 1937, at Washington, D. C.

Benedict Wolf  
*Secretary.*

(Seal)

130

## UNITED STATES OF AMERICA.

## BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 10th day of June, 1937.

## Present:

Edwin S. Smith.  
Donald Wakefield Smith.

• • (Caption—XIII-C-80) • •

ORDER DENYING APPLICATION FOR SUBPOENAS  
AND SUBPOENA DUCES TECUM.

A hearing having been commenced in this matter, and application for subpoenas and subpoena duces tecum having been duly filed by the respondent, and the Board having considered the matter, and it appearing to the Board that many of the matters desired to be proven by the witnesses sought

to be subpoenaed will be offered in evidence as part of the complainants affirmative case,

It Is Hereby Ordered that said application for subpoenas and subpoena duces tecum be and hereby is denied without prejudice to the respondent's right to renew said application upon completion of the complainants affirmative case.

By direction of the Board:

Benedict Wolf,  
Benedict Wolf,  
*Secretary.*

131 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

\* \* (Caption—XIII-C-80) \* \*

RENEWAL OF APPLICATION FOR SUBPOENAS AND  
SUBPOENAS DUCES TECUM.

(Board Exhibit 1-P.)

To the National Labor Relations Board:

Now comes Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, and renews its application for the following subpoenas and subpoenas duces tecum to be issued forthwith:

1. Subpoena directed to Robert E. Pilkington;
2. Subpoena duces tecum to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America requiring the production at the hearing in this cause of all of its minute records, books of account, check books, membership cards, membership books and lists, and all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937;
3. Subpoena duces tecum to Carl Swanson, Secretary of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America requiring the production at the hearing in this cause of all of its minute records, books of account, check books, membership cards, membership books

and lists, and all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937; and also all copies of the charters, by-laws, articles of association, rules of eligibility, and any and all other rules and regulations governing the organization and conduct of said Lodge 66.

The purpose of the testimony of Robert E. Pilkington is to establish threats of violence against the respondent and its officers made by certain of the persons named in paragraphs 8 and 11 of the complaint.

The purposes of the evidence sought to be obtained by the foregoing subpoenas duces tecum are:

(a) To refute the charges of the complaint in this proceeding that said Lodge 66, at the times specified in the complaint, represented or was authorized to act for a majority of the production and maintenance employees of the respondent;

(b) To prove whether or not the violent seizure and retention of respondent's plant was a common enterprize of all of the members of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and 133 financed and directed by said Lodge on behalf of all of its members; and

(c) To refute the testimony of witnesses heretofore called by the Board with respect to the eligibility rules of said Lodge 66, its organization and existence as an alleged labor organization, and other matters heretofore brought in issue by the complaint and answer.

The only evidence adduced by the Board with reference to the membership of Lodge 66 on the several dates mentioned in the complaint, is a group of cards purporting to be applications for membership, unidentified by anyone, and an off-hand estimate by one of the members based entirely on its members. Similarly there were no records produced with respect to the eligibility rules of the Lodge and the testimony of Lodge officers showed a variance in their understanding of those eligibility rules.

The renewal of application for subpoenas is filed without waiver of the objections and exceptions heretofore made to



the refusal of the Board to issue the subpoenas requested by the respondent and the overruling by the Trial Examiner in the hearing for such subpoenas.

Fansteel Metallurgical Corporation

By R. J. Aitchison

*President.*

Levinson Becker Peebles & Swiren

*Counsel for Respondents.*

134 (Endorsed) Before the National Labor Relations Board  
• • (Caption—XIII-C-80) • • Renewal of Application for Subpoenas and Subpoenas Duces Tecum Delivered to the Trial Examiner at 5:30 P. M. on 6/23/37 by respondents attorneys FB Law Offices Levinson Becker Peebles & Swiren One N La Salle St. Central 8130 Chicago.

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(Board Exhibit 1-V.)

UNITED STATES OF AMERICA.

NATIONAL LABOR RELATIONS BOARD.

SUBPOENA DUCES TECUM.

To Carl A. Swanson, Financial Secretary  
Waukegan, Illinois.

You are hereby required to appear before a trial examiner of the National Labor Relations Board, at New Post Office Building in the City of Waukegan, Illinois on the 25th day of June, 1937, at 4 o'clock P. M. of that day, to testify in the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron Steel and Tin Workers of North America, Lodge 66.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

Membership lists, membership card and membership books.  
Fail not at your peril.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Washington, D. C. this 25th day of June, 1937.

J. Warren Madden.

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(Board Exhibit 1-W.)

## UNITED STATES OF AMERICA.

## NATIONAL LABOR RELATIONS BOARD.

## SUBPOENA.

To Robert Pilkington

United States Dept. of Labor, Chicago, Illinois.

You are hereby required to appear before a Trial Examiner of the National Labor Relations Board, at New Post Office Building in the City of Waukegan, Illinois on the 25th day of June, 1937, at 4 o'clock P. M. of that day, to testify in the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron Steel and Tin Workers of North America, Lodge 66.

Fail not at your peril.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Washington, D. C. this 25th day of June, 1937.

(Seal)

Edwin S. Smith.

2995

## UNITED STATES OF AMERICA.

## BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board held at its offices at 1010 Vermont Avenue, N. W., Washington, D. C., on the 25th day of June, 1937.

## Present:

J. Warren Madden, Chairman.  
Edwin S. Smith.  
Donald Wakefield Smith.

\* \* (Caption—XIII-C-80) \* \*

ORDER GRANTING IN PART AND DENYING IN PART  
APPLICATION OF FANSTEEL METALLURGICAL  
CORPORATION FOR SUBPOENAS AND SUBPOENAS  
DUCES TECUM.

Whereas, on June 3, 1937, during the pendency of hearings in the above-entitled matter, Fansteel Metallurgical Corporation made application for an order for subpoenas and subpoenas duces tecum, which application was, on June 10, 1937, denied without prejudice to renewal upon completion of the affirmative case of the National Labor Relations Board; and

Whereas, on June 23, 1937, said Fansteel Metallurgical Corporation, renewed its application for certain subpoenas and subpoenas duces tecum;

Now, Therefore, the National Labor Relations Board, being sufficiently advised in the premises and acting pursuant to Section 21 of the Rules and Regulations of the National Labor Relations Board—Series 1, as amended, effective April 28, 1936, it is hereby

2996 Ordered

(a) That so much of said renewed application be granted as is contained in paragraph numbered "1" thereof, namely, that a subpoena be issued, directly to Robert E. Pilkington;

(b) That paragraph numbered "2" of said renewal application be granted in part and denied in part, namely, that a subpoena duces tecum be issued, directed to the Amal-

gamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, requiring it to produce its membership cards, membership books and lists, but that application for a subpoena duces tecum requiring the production by said Lodge 66 of its minute records, books of account and check books and "all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937" be and is hereby denied;

(c) That paragraph numbered "3" of said renewal application be granted in part and denied in part, namely, that a subpoena duces tecum be issued, directed to Carl Swanson, Secretary of said Lodge 66, requiring him to produce the membership cards, membership books and lists of said Lodge 66, but that application for a subpoena duces tecum directing said Carl Swanson to produce the minute records, books of account and check books of said Lodge 66 and "all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937" and "all copies of the charters, by-laws, articles 2997 of association, rules of eligibility, and any and all other rules and regulations governing the organization and conduct of said Lodge 66" be and is hereby denied.

By direction of the National Labor Relations Board:

Benedict Wolf,  
*Secretary.*

473 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80) • •

Room 4, New U. S. Post Office  
Building,  
Waukegan, Illinois,  
Monday, June 7th, 1937.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the National Labor Relations Board.  
Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by  
Max Swiren; and Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois, on behalf of Fansteel Metallurgical Corporation.

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PROCEEDINGS.

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, at the opening of the Board's case, I desire first to introduce Board's Exhibit No. 1. This exhibit will consist of the several papers following, and I suggest that they be further identified as follows: 1-A, the complaint, amended charge, copy of the rules and regulations, and acknowledgment of service by the respondent. No. 1-B, the registered return reciting the service of the complaint upon the union. No. 1-C, motion for extension of time to file answer, and to continue the cause. No. 1-D, affidavit in support of such motion. No. 1-E, order of Regional Director denying the motion. No. 1-F, the answer. No. 1-G, application for subpoenas, and subpoenas duces tecum. No. 1-H will be the order designating the Trial Examiner, which order I have not yet received.

Mr. Swiren: You say there is no order here designating the Trial Examiner?

Mr. Walsh: I have not yet received it.

Mr. Swiren: Does the Examiner have it?

Trial Examiner Dudley: No. The designation is normally sent to the Regional Director, in the first instance.

Mr. Walsh: Does counsel care to examine the papers?

Mr. Swiren: No. I assume that you characterized them correctly.

475 Mr. Walsh: I offer them in evidence.

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: Yes. If the Examiner please, I desire at this time, at the outset, before any proceedings go forward, to present again my motion for the adjournment of this cause. If the Examiner is ready to receive the motion—

Trial Examiner Dudley: Before you go into that: is there any objection to the reception of these documents in evidence?

Mr. Swiren: Yes, I object to any proceeding at this time; I object to any proceedings going forward at this time, and ask that the proceedings be adjourned, for the following reasons:

On June 2nd, as set out in our affidavit, the proceedings before the Circuit Court of Lake County began in the case of Fansteel Metallurgical Corporation versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and certain individuals; being Cause No. 37551.

That proceeding was originally commenced by the Fansteel Metallurgical Corporation against the union which filed the charge upon which the complaint in the case at bar is based, and against certain individuals, to compel them to remove from the premises of the respondent which they had illegally and with violence occupied in a so-called sit-  
476 down strike on the 17th of February.

In the course of those proceedings, first a temporary injunction was entered, requiring the defendants, including this union and the individual defendants, to vacate and deliver over the premises which they had so illegally seized. That injunctive order was not complied with, and there was a writ of attachment thereupon issued against the individuals and all others occupying the premises, to show cause if any they had why they should not be held in contempt of the Circuit Court of Lake County. Upon service of that attachment order, the parties in the plant declined to comply;



and thereupon the sheriff endeavored to execute the writ, and was resisted by violence by those men.

Subsequently, a week later, he succeeded in executing that writ, but only again after both resistance and violence on the part of those men so illegally occupying the plant.

On June 2nd, pursuant to setting two weeks prior to that time, there was to be heard the contempt proceeding against some 90 or 95 men, including most of the people charged in paragraph 8 with having been discharged for membership in the union, and most of the people named in paragraph 11 of the complaint in this case, charged with having been refused reinstatement because of union membership.

There was also set for hearing at that time the application of the plaintiff, respondent in this case, for a permanent 477 injunction. Other matters had intervened, such as violence, and a supplemental complaint had been filed. When service of the complaint in this case was made on the 26th of May, this matter had already been set. I might say, it had been set a number of times before, and continued from time to time at the insistence of the union and its counsel.

Trial Examiner Dudley: By "this matter," you mean which matter?

Mr. Swiren: I am talking about the proceeding in the Circuit Court of Lake County.

Trial Examiner Dudley: Yes.

Mr. Swiren: It finally came up two weeks before June 2nd, and they then for the first time presented a petition for change of venue, which was promptly granted, despite the fact that the Court indicated it was not proper at that time; and we charged then that it was an activity for delay. The matter was then set down for definite hearing on June 2nd.

We set those facts up in the affidavit, and state, first, that the same counsel were engaged in that case; second, the company was engaged in that case as party plaintiff; third, that the witnesses, the principal witnesses required were engaged in that case,—and I might interrupt to say that I see a number of men here who are here in violation of the instructions and order of the Circuit Court of Lake County.

They are respondents in that case, and they were or-  
478 dered to appear in court there; and they are appearing here in violation of the court order, and have subjected themselves to bond forfeiture and further contempt proceedings by appearing here.

We do not desire, as we pointed out in our motion, to in-

terfere with the orderly procedure there; and if we appear here, either as counsel, or by the officers of the corporation, it means that we will be disrupting and interfering with our case there.

That case proceeded to trial on June 2nd, and has been on trial continuously since that date. On Saturday counsel for the union—who is also representing the respondents there, in the contempt proceeding—announced that he would call approximately 85 or 90 witnesses,—or rather, that was on Friday. Since that time he has called 12 or 15 witnesses. There is no doubt but that we will continue in the contempt proceeding during the day, and probably tomorrow, and that the final decree proceedings will consume another day or two.

In view of the conflict, and the clear-cut prejudice that would result to the respondent, we feel that there is no question but what we are entitled to an adjournment of this proceeding until that case has been completed. Now, in view of the fact that that case required so many witnesses, we have been unable to adequately prepare this case, and ought to have at least a few days after that, in which to make our preparation.

479 In addition to that, as an additional ground, we filed application on June 3rd for subpoenas and subpoenas duces tecum. None of those subpoenas have been issued. They will require service on approximately 130 or 140 people, which necessarily will consume a considerable period of time; and we will be unduly prejudiced to go into the trial of this case without those subpoenas.

I might say that I have never known of any proceeding before a court of law or a court of equity, or before any quasi-judicial tribunal, in which circumstances of that kind have not been promptly recognized as a basis, and a very proper basis, for an adjournment.

I might say, too, that a denial of this motion will deny to the respondent its constitutional right to due process. Obviously we cannot be granted due process if we are compelled to interfere with a pending case, and proceed here without the opportunity to subpoena witnesses, which is accorded to all the other parties.

Mr. Walsh: May it please the Examiner, as far as relates to the engagement of counsel in another case, I might state these facts, that the corporation here has as its counsel the firm of Levinson, Becker, Peebles & Swiren, of which Mr.

Swiren here is a partner. I am advised that that is a very large and very able law firm. They are engaged now in the trial of certain contempt proceedings in which they have 480 engaged local counsel to assist them; and, as I am advised, the local counsel and Mr. Swiren's associates have been conducting those proceedings. Mr. Swiren naturally, being one of counsel, desires to be present.

There is no desire upon the part of the Board to conflict in any way with that hearing over there, or in anywise interfere with the orderly process and procedure of the Circuit Court of Lake County. However, this litigation which is in progress over there at the present time, if what Mr. Swiren states is true, will drag out for some little time yet. I think, as a matter of the practical administration of the business of the court—

Mr. Swiren: It will be three or four or five days yet.

Mr. Walsh: Pardon me?

Mr. Swiren: Three or four or five days yet.

Mr. Walsh: All right. As a matter of the practical administration of the business of that court and this Board, sufficient adjustments in the attendance of the personnel at both places can be worked out between counsel.

Now, as to the violation of the injunction by my witnesses appearing here: I was not advised that they were so violating it.

Mr. Swiren: That is correct, Mr. Walsh.

Mr. Walsh: It is my understanding that this is a civil proceeding, a civil contempt proceeding, in the Circuit Court 481 of Lake County, involving the violation of an injunction, to which injunction these witnesses now present, are parties. I know of no law, either in Lake County, or otherwise, that would require the parties to be present in court if they do not so desire; so I do not believe that is a very serious infraction of any injunctive order, even though it be issued by the Circuit Court of Lake County.

Now, as to whether a denial of this motion would infringe upon the constitutional rights of the respondent as to due process, I might say that the law does not take into contemplation such conflict, as being a denial of due process. As a matter of fact, the respondent is here; the respondent has appeared before your Honor by its counsel; and it is amply prepared to proceed with the trial of this case.

I might go back so far as the time when the strike oc-

curred. From the very time that the strike occurred, Mr. Swiren personally, and in his professional capacity, has been closely and intimately connected with the activities both of his clients, and of the witnesses here. He knows who is here now, of the personnel. He knows all of the very many and intricate facts that are at issue before this Examiner. It is not as though he were called in lately and recently, to represent his client before this Board. As I say, since the 17th day of February, Mr. Swiren has practically lived with this lawsuit. There are no facts alleged in this complaint, 482 upon which I expect the Board to base an order, with which Mr. Swiren is not personally, intimately acquainted. So the plea for time for preparation is really throwing dust in the eyes of this Board.

Mr. Swiren: If the Examiner please, I would like to reply, if the Examiner will permit.

Trial Examiner Dudley: Perhaps we are getting our record unduly long here. I would like to get down to the meat of it as quickly as I can. Let me ask you a few questions first, Mr. Swiren.

Mr. Swiren: Yes.

Trial Examiner Dudley: We want to give all of the courtesies that are normally given to counsel who have several lawsuits on at one time, at the same time; and if there is a conflict as to where witnesses should be, why, we certainly should recognize that. Now, in regard to the availability of counsel: how many employees are there in your law firm?

Mr. Swiren: I think there are about thirteen, but I might say this, that no one but Mr. Keele and myself have known about this situation, and the very familiarity of which Mr. Walsh speaks, is what makes it very essential that I be present in court in this matter.

As a matter of fact also, we have other lawsuits. I have not tried to set up the lawsuits that are now pending, or now on trial, in which others are engaged.

483 Trial Examiner Dudley: How many employees of your firm are members of the bar?

Mr. Swiren: I am talking about members of the bar. No one practices law in our office unless he is a member of the bar.

Trial Examiner Dudley: Do you represent this company as general counsel in all of its matters?

Mr. Swiren: I have done this company's work as general counsel for the last ten years. I have been assisted from

time to time by Mr. Keele, and sometimes by Mr. Greenberg, who is now before the Bureau of Internal Revenue, on trial there.

Trial Examiner Dudley: You have known about the proceedings here I assume ever since their beginning?

Mr. Swiren: No. I have known about the complaint in this fashion: a week or so before the charges were filed, or rather before the complaint was issued, Mr. Walsh advised us that he was investigating the matter. We offered our assistance. He said he would not recommend a complaint unless after his investigation he found it worth while to do so. A few days before the complaint was issued, he advised us that he was forwarding a complaint to Washington. These charges are—

Trial Examiner Dudley: When did you first know of these proceedings?

484 Mr. Swiren: About the middle of May.

Trial Examiner Dudley: About the middle of May.

Mr. Swiren: Yes, sir.

Mr. Walsh: About the 9th or 10th of May, as I remember it.

Mr. Swiren: Well, I will say this, that Mr. Beman, former director, told us that there were some charges filed in connection with collective bargaining. We asked for those charges repeatedly, but were never given even the substance of them. We were advised that the Board was not free to make them available to us.

Trial Examiner Dudley: There were copies of the charge attached to the complaint served on you, were there not?

Mr. Swiren: Yes, sir; that is the complaint that was filed on May 21st.

Trial Examiner Dudley: Now, in regard to a possible conflict with the Circuit Court of Lake County, affecting witnesses: will you tell me what that is?

Mr. Swiren: Yes. These men are respondents to an attachment order. They were arrested, pursuant to the attachment order. They gave bond, and they were required under their bond to return to court at the opening of the hearing; and from time to time the court announced that the respondents were to remain in court during the hearing. Specifically, on Saturday, the court announced that. These  
485 men are under bond to appear there, under a compliance order. They are not merely civil parties.



Trial Examiner Dudley: I take it that they appeared there when the court commenced its proceeding.

Mr. Swiren: Originally, and they were required to appear there Saturday, specifically; and several times during the hearing, in this way: "At the opening of court tomorrow morning, we want everybody here for the hearing tomorrow."

Trial Examiner Dudley: They are represented there by counsel?

Mr. Swiren: They are.

Trial Examiner Dudley: Then it is a case where they have been requested to appear as defendants before the court.

Mr. Swiren: Oh, no; they were arrested.

Trial Examiner Dudley: And are now represented by counsel.

Mr. Swiren: They were arrested, and required to be there personally. Their bodies were required to be attached, and brought before the court by the attachment order. If the Board is interested, I will read the order.

Trial Examiner Dudley: You may read it.

Mr. Swiren: "People of the State of Illinois"—

Trial Examiner Dudley: Read me just the substance of it.

Mr. Swiren: Yes.

486 Trial Examiner Dudley: Just the part to which you refer.

Mr. Swiren: "We command you"—this is addressed to the sheriff—"to take the following persons, to wit."

Trial Examiner Dudley: That is the original order.

Mr. Swiren: Yes.

Trial Examiner Dudley: Is there any order outside of the original order?

Mr. Swiren: Just the oral order directing that they be in court, because they are under bond to be there.

Trial Examiner Dudley: Do you want those people here as your witnesses?

Mr. Swiren: I do not want anybody here at this moment. I want an opportunity to go back to court, where I was this morning.

Trial Examiner Dudley: If the proceedings continue here, had you contemplated calling these people as your witnesses today?

Mr. Swiren: I had not contemplated calling them today, because I am defending this case.



Trial Examiner Dudley: Mr. Walsh, had you contemplated calling these people as witnesses today?

Mr. Walsh: There are certain witnesses here whom I will need during the day, I expect, depending somewhat, if the Examiner please, on the length of time it will take me to develop the technical part of the case from the records 487 which I have subpoenaed. I had not anticipated that I

would get through with the technical phase of the case, before the end of this day, and perhaps not before tomorrow; depending entirely upon the length of the witnesses who are adduced.

Trial Examiner Dudley: Very well. I will make my ruling. First, the exhibits offered by the Board will be admitted into evidence.

(The documents referred to were received in evidence and marked collectively BOARD'S EXHIBIT NO. 1-A to H, both inclusive.)

Trial Examiner Dudley: Secondly, inasmuch as it seems to me that counsel for respondent have had ample time to prepare themselves for this hearing, and if they have been engaged in other litigation, they have nevertheless had the obligation to retain sufficient legal assistance to enable them to represent their client here; and third, inasmuch as the witnesses apparently are not going to be required, both in the other proceeding, and in this proceeding, today; I will therefore rule that the motion for a continuance is disallowed.

Mr. Swiren: May I have this understood—

Trial Examiner Dudley: Just a moment. Now, if we find that any of the parties are needed in the other court, they will of course be free to go to the other court. If we find that the other court desires the presence of certain people 488 at the same time that this hearing desires their presence, we will attempt to arrange with those engaged in the other litigation, for times of hearing those witnesses that are mutually satisfactory.

I believe, then, that there will be no conflict between the two proceedings, either as to the presence of the personnel, or as to the presence of counsel.

Have you any further motions to offer at this time, Mr. Swiren?

Mr. Swiren: Yes. I now want to move that the Board refrain from hearing this matter, either directly, or through any agent or employee or agency of the Board, upon the

ground of undue prejudice on the part of the Board against the respondent in this case.

In that respect I think I ought to say that I have never known of a more consistent series of efforts to prejudice one party, on the part of the representatives of a quasi-judicial body, such as the National Labor Relations Board. In the first place when the original charge was filed, an agent of the Board undertook to act for the union which filed the charge in this case, in revising and rewriting a contract to be submitted to the respondent in this case on behalf of the union, notwithstanding the express provisions of the Act to the effect that the Board is not to engage in any activities of that character.

489 Trial Examiner Dudley: To what provision of the Act do you refer?

Mr. Swiren: I am referring to the provision of the Act which requires that the Board and its officials do not engage in mediation.

Trial Examiner Dudley: What section is that?

Mr. Swiren: May I use counsel's copy?

Mr. Walsh: Certainly.

Mr. Swiren: It is not a section; it is just a sentence; not a whole paragraph.

Trial Examiner Dudley: Beginning with Section 3 are the sections creating the Board.

Mr. Swiren: "Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor."

Trial Examiner Dudley: Where is that?

Mr. Swiren: Subdivision 3.

Trial Examiner Dudley: Which one?

Mr. Swiren: That is in Section 4.

Trial Examiner Dudley: The last sentence in paragraph (a)?

Mr. Swiren: That is right.

No. 2: Prior to the filing of this complaint we were requested by an attorney for the Board to reinstate men 490 who had been discharged for seizing, with violence and force, two buildings of the plant of this respondent; and when we declined to do so, this attorney advised us that the matter had been taken up with the Board, and they had already determined that it constituted a violation of the National Labor Relations Act.

**Trial Examiner Dudley:** Do you not believe, Mr. Swiren, that it would be best, if you are going to introduce facts to support your motion, that you introduce them in the form of testimony, rather than in the form of your own statements.

**Mr. Swiren:** I shall be very glad to testify.

**Trial Examiner Dudley:** You are arguing now.

**Mr. Swiren:** That was not the intention.

**Trial Examiner Dudley:** And your argument should be as a matter of law, because we have no facts in the case at all.

**Mr. Swiren:** I am offering my motion, and stating the grounds, and I will be very glad to support them at the outset of the hearing.

**Trial Examiner Dudley:** Well now, should not the testimony come before the motion based on that testimony? If you desire to introduce witnesses to support your motion, that is all right. Otherwise you should be sworn, and testify.

**Mr. Swiren:** I will be glad to be sworn, and testify. I now ask the Trial Examiner to direct Mr. Bajork, Regional 491 Director, and Mr. Disser, employed by the Board, to appear before the Trial Examiner, so that we can introduce their evidence.

**Trial Examiner Dudley:** In support of your motion?

**Mr. Swiren:** Yes.

**Trial Examiner Dudley:** Now, let us get your motion.

**Mr. Swiren:** My motion is—

**Trial Examiner Dudley:** Mr. Reporter, will you go back and begin at the very beginning, and read counsel's motion.

(The record was read as above recorded.)

**Trial Examiner Dudley:** That is your motion.

**Mr. Swiren:** Yes.

**Trial Examiner Dudley:** What I want to do if possible is to keep out a lot of wanderings around, and get a right to the point.

**Mr. Swiren:** That is why I am attempting to outline these matters. I wanted to outline these matter., and then the Trial Examiner could see what we had in mind, and the basis for it. I shall be very glad to proceed.

**Trial Examiner Dudley:** You say you have been unduly prejudiced—

**Mr. Swiren:** Yes.

**Trial Examiner Dudley:** —because the Board has served, or attempted to serve, in the capacity, or for the purposes of mediation—

492 Mr. Swiren: No, has attempted to serve as a representative of the party filing the charges in this case, by acting on their behalf in revising the contract to be submitted to this respondent. That is in violation of the law, and certainly runs counter to any good conscience, where the Board is to act as the judge in the matter.

Mr. Walsh: Well, then, your second ground has nothing to do with—

Mr. Swiren: I refer to threats made by Mr. Cranefield. I have not come to the third, fourth and fifth yet.

Mr. Walsh: Maybe we had better have them.

Mr. Swiren: Yes, I think it might expedite it.

Trial Examiner Dudley: Very well.

Mr. Swiren: Third, the threat made by Mr. Bajork, Regional Director of this Board for the Thirteenth Region, that he intends to break the back of the National Metal Trades Association, and will use the Fansteel case to do it.

Fourth, the refusal of the Trial Examiner to adjourn this matter until the conclusion of the pending conflicting litigation.

Fifth, the failure or refusal of the Board to issue subpoenas, so that witnesses may be required to attend on behalf of the respondent.

I might say in addition—

Trial Examiner Dudley: Those are your five points?

493 Mr. Swiren: Yes. I might say this, with respect to the latter two points, that our limited ingenuity has not been sufficient to discover any previous case of this character, either before the present Board, or any prior board, and I do not think that Mr. Walsh has been able to uncover any reported decisions; and therefore we have a new and a novel situation that has not been determined or passed upon in the reported decisions heretofore.

It seems to me that under these circumstances, having in mind that the Board is clothed with jurisdiction, that it has the duty first of investigating, and then of prosecuting, and finally of deciding the matter, the Board ought to be particularly scrupulous to avoid any showing or even intimation of prejudice; and it would have to go a long way, even further than the courts, to avoid that prejudice.

What we are asking is merely what any court would as a matter of course, in any proceeding, allow.

Trial Examiner Dudley: Now, Mr. Swiren, let me ask you

about these points. The first point is this: you say that the Board assisted the union in preparing its charge.

Mr. Swiren: No, that is not correct. Apparently I am having some difficulty, if the Examiner please. The union presented an agreement, which was rejected by the company. Mr. Disser, representing the Board, then revised that agreement for the union, to be presented to the company; there-  
494 by taking a position as a representative of the union.

That of course runs counter to the law, and any good conscience.

Trial Examiner Dudley: You mean, he assisted in revising the contract?

Mr. Swiren: Yes, and acted for one of the parties; and when an agent of the Board does that, I do not think the Board is qualified to act as between the parties.

Trial Examiner Dudley: Did he act as such in negotiations?

Mr. Swiren: In negotiations?

Trial Examiner Dudley: Yes.

Mr. Swiren: He appeared and attempted to negotiate.

Trial Examiner Dudley: That is the basis of the first point?

Mr. Swiren: Yes.

Mr. Walsh: May I say, may it please the Examiner, that the company would not meet with the union, and therefore anything that was written was of no force, and of no effect.

Mr. Swiren: You may say that, Mr. Walsh, but I will do my own talking for myself.

Trial Examiner Dudley: What was the date of this, Mr. Swiren?

Mr. Swiren: That was in September 1936.

Trial Examiner Dudley: What date in September?

Mr. Swiren: I cannot tell you offhand. Mr. Disser would be the best witness for that, and he is the agent of your  
495 Board.

Is he still employed by the Board, Mr. Walsh?

Mr. Walsh: Why, to my knowledge, he is.

Mr. Swiren: Well, your knowledge of course is very broad on these things, and I will take your word for it.

Mr. Walsh: Thank you.

Trial Examiner Dudley: Mr. Walsh, I thought that there was an original complaint filed in September 1936.

Mr. Walsh: There was.

Trial Examiner Dudley: Is that a part of the file?



Mr. Swiren: I think there was.

Mr. Walsh: It is not a part of the pleadings. I have the original charge here.

Mr. Swiren: What date is that, Mr. Walsh?

Mr. Walsh: Filed on the 15th day of September.

Trial Examiner Dudley: Do you desire to introduce it?

Mr. Walsh: I shall be glad to introduce it if you desire.

Trial Examiner Dudley: I think you should.

Mr. Swiren: We will object to that because we have never seen it, and do not know what it contains; it has never been served on us; we have never heard about it, even in substance, except indirectly and secondarily.

Trial Examiner Dudley: Mr. Walsh, I suggest that it should be introduced in evidence, to make the pleadings 496 complete.

Mr. Walsh: If the Examiner please, I will offer it in evidence, and ask that it be identified as BOARD'S EXHIBIT NO. 1-I.

Mr. Swiren: May I see it?

Mr. Walsh: Certainly.

Mr. Swiren: We object, if the Examiner please, on the grounds already stated. We have never been served with a copy of it; no action was taken on it; and as far as we know, it is just another piece of paper.

Trial Examiner Dudley: The objection is overruled, and it may be admitted in evidence.

(The document referred to was received in evidence as part of Board's Exhibit No. 1, and marked BOARD'S EXHIBIT NO. 1-I.)

Trial Examiner Dudley: Now, Mr. Swiren, in regard to your points on this motion: it seems to me that the points which you have made, alleging undue prejudice on the part of the Board, are not such as to indicate that the hearing which we will conduct here, will be characterized by any undue prejudice.

You must remember that the Board essentially has at least two independent parts of its organization; the regional directors, who have the duties given them by the statute, and by the regulations of the Board, and also the trial exam- 497 iners, who are not under the regional directors, nor affiliated with them in any way.

For example, I never heard the name of the Regional Director here until you mentioned it this morning. I never met Mr. Walsh, or heard of him, even, until I came into the court house this morning.



Mr. Swiren: I am not worried about Mr. Walsh.

Trial Examiner Dudley: The duty of the Regional director and the Regional attorney is to present facts as the result of their investigations, which may indicate a violation of the Act. It is their duty also to make investigations if complaints or charges are lodged with them. You can get that more definitely by referring to Section 10 paragraph (b).

I think therefore that the actions to date of the Regional director, and the other parties whom you have mentioned, would indicate no more than an investigation by those parties of charges that apparently have been lodged with them concerning violations of the Act; and their role today is to bring before the Board facts which would indicate that there were or were not violations of the Act. It is my duty as Trial Examiner to sit entirely independent of the Regional director and the Regional attorney, and to attempt to get those facts in, in orderly fashion, and report them to Washington with my recommendations.

Mr. Swiren: May I ask right there—

498 Trial Examiner Dudley: Just a moment.

Mr. Swiren: Pardon me. I am sorry.

Trial Examiner Dudley: (Continuing) In regard to your last point about the refusal to issue subpoenas, I think that if you find, when you are ready to introduce witnesses, that you have not been able to procure those witnesses, or have not been able to get subpoenas for those witnesses, if you will inform me, I will take the proper steps to see that you get subpoenas.

Mr. Swiren: Well, I might say that the Examiner's remarks just now are the first approach to a judicial consideration of the matter that we have received in our contacts with the Board so far.

Let me ask the Examiner whether Mr. Disser and Mr. Cranefield, and Mr. Bajork, of the Board, will be asked to appear so that the record may be complete, as far as evidence is concerned, on the motion?

Trial Examiner Dudley: The Examiner has never heard of those men, and he does not even know who they are, yet.

Mr. Swiren: They are all Labor Board employees.

Mr. Walsh: Off the record—

Trial Examiner Dudley: Pardon me. If Mr. Walsh does not call them as witnesses, and if you wish to call them as witnesses, you certainly have that right.

Mr. Swiren: We intend to ask the Examiner for sub-499 poenaes for Messrs. Disser, Cranefield and Bajork, in accordance with the regulations.

Trial Examiner Dudley: I think possibly you can get them without subpoenas.

Mr. Swiren: I would think so.

Mr. Walsh: I would like to argue the motion before the Examiner rules on it.

Mr. Swiren: He has already ruled for you.

Mr. Walsh: Has the Examiner ruled on the request for subpoenas?

Trial Examiner Dudley: No, not on the request for subpoenas.

Mr. Walsh: (Continuing) For representatives of the Board?

Trial Examiner Dudley: First, let us take care of the motion about the Board refraining from a hearing because of prejudice.

Mr. Swiren: It is in connection with that motion that we are talking.

Trial Examiner Dudley: Mr. Walsh?

Mr. Walsh: I might make this statement to the Board and the Trial Examiner, for the record, that any action taken by Mr. Cranefield, or by Mr. Disser, or by Mr. Bajork, would be purely an administrative action; in their function as administrative agents of the Board, and not as judicial agents of 500 the Board. Anything that they may have done, or may have said, cannot possibly indicate any prejudice on the part of the Board toward this particular respondent.

As Mr. Swiren well knows, and as the Examiner has said, the Board makes its findings upon the facts that are produced.

Mr. Swiren: We hope that is true.

Mr. Walsh: (Continuing) In the hearing, in the record; and, as the Trial Examiner and Mr. Swiren know, those facts are reviewable by the Circuit Court of Appeals. So if, in the course of the conduct of the hearing, making a record upon which the Circuit Court of Appeals will rule, there is prejudicial error committed, either by members of the administrative setup of the Board, or the Trial Examiner, or the Board itself, those matters are reviewable by the Circuit Court of Appeals. So any act which may have preceded this hearing, by an administrative agent of the Board, can in no wise reflect any prejudice of any kind.

Therefore I move that the entire motion that the Board

refrain from a hearing on the ground of prejudice, be denied. The request for subpoenas for administrative agents of the Board must necessarily fall, with the denial of that motion.

Trial Examiner Dudley: Mr. Swiren, I might call your attention to the fact that out of a total of 865 cases—

Mr. Swiren: What page are you reading from?

Trial Examiner Dudley: Page 35. I just want to call 501 this to your attention. You will notice that table on page 35 of the annual report of the Board.

Mr. Swiren: Yes.

Trial Examiner Dudley: You see there that out of a total of 865 complaint cases, they disposed of 531 of them before they ever issued any complaint, which, you see, must necessarily follow as the result of investigation and attempts at settlement.

Mr. Swiren: Or a withdrawal of the charges.

Trial Examiner Dudley: Or a withdrawal of the charges made through the Board; which I think will explain what the Board has apparently been attempting to do, if what you say is correct.

Mr. Swiren: I might say this—

Trial Examiner Dudley: You will notice also that even after complaints were issued, there are nine cases shown to have been dismissed by the Trial Examiner, or the Board; which indicates that the action of the Board in making preliminary investigations does not mean that the Board or the Trial Examiner are prejudiced in any way.

Mr. Swiren: I appreciate the fact that this Trial Examiner has not had the benefit of that prejudice to date, and I trust we can continue our hearings without that benefit. On the other hand, I cannot ignore such matters as threats coming from responsible agents of the Board, as well as the Regional Director, that are not to be regarded as within the normal investigation functions of any human being. That rather arises from an emotional prejudice of some kind or another; and whether that relates to the Board, or whether it is the individual prejudice of the particular individual, is something that the Trial Examiner ought to probe.

Trial Examiner Dudley: Well, I will have to overrule—or rather, to deny your motion.

Mr. Swiren: May I have the record show that we have an exception noted—

Trial Examiner Dudley: Yes.

Mr. Swiren: (Continuing) —to every ruling adverse to

us, so as to save time and trouble of stating individual exceptions?

Trial Examiner Dudley: The record will so show.

Mr. Swiren: Is that agreeable?

Mr. Walsh: That is all right.

Trial Examiner Dudley: The record will show that the attorney for the respondent has an exception noted to every adverse ruling, every ruling made adversely to his requests, objections or motions.

Now, do you have any other motions to make, Mr. Swiren?

Mr. Swiren: Yes, I have another motion. If the Examiner and counsel will refer to the complaint: I desire to move that so much of the complaint as refers to the charges that 503 the respondent failed to bargain collectively, included in paragraphs 5 and 6, be stricken from the complaint on the ground that the question is moot, by reason of the fact that the men making the complaint were discharged by the respondent, and therefore are not employees.

Trial Examiner Dudley: Will you just go back, please, Mr. Reporter, and read counsel's motion to me again.

(The motion was read as above recorded.)

Trial Examiner Dudley: Mr. Swiren, what do you mean by "the men making the complaint"? Do you mean, the men who signed the charge?

Mr. Swiren: Yes. This is made on behalf of men who were admittedly discharged, as set out in the complaint; and, those men not being employees, the question of whether the respondent bargained with them collectively or not, or bargained with their representatives at the time they were employees, is a moot question.

Mr. Walsh: Would the Trial Examiner care to hear argument on that?

Trial Examiner Dudley: Let me read paragraphs 5 and 6, first.

Mr. Swiren: I suggest in that connection that the Examiner also refer to paragraph 8, which relates to the discharge.

Trial Examiner Dudley: The ground for your motion 504 I take it is that paragraphs 5 and 6 attempt to charge the company with failure or refusal to enter into collective bargaining with certain employees; and paragraph 8 shows that those people were not employees.

Mr. Swiren: That is correct—are not now employees.

Trial Examiner Dudley: Well, is it not true that paragraphs 5 and 6 do not refer to any definite employees?

Mr. Swiren: That is correct.

Trial Examiner Dudley: So that those charges would still be valid charges, even though certain employees, as of that time, might not be employees now.

Mr. Swiren: That is conceivable, but rather difficult to believe, if you will read the whole charge.

Trial Examiner Dudley: The charges in 5 and 6 are general. They do not refer to any definite employees at all.

Mr. Swiren: That is right.

Trial Examiner Dudley: They do not name any definite employees.

Mr. Swiren: That is right, but the whole purport of the complaint makes it clear that they are the same people.

Trial Examiner Dudley: Well, are the employees named in paragraph 8, all of the employees of the plant?

Mr. Swiren: No, no; only a small percentage.

Trial Examiner Dudley: A small percentage?

Mr. Swiren: About 5 per cent.

505 Trial Examiner Dudley: Then paragraphs 5 and 6 could apply to general employees who are still employees.

Mr. Swiren: As a matter of fact, it is a larger percentage. I might just ask at this time—

Trial Examiner Dudley: I would like to point out—

Mr. Swiren: About one third of the employees are named in there.

Trial Examiner Dudley: About one third of the employees?

Mr. Swiren: Yes, just about one third of the total employees.

Trial Examiner Dudley: Well, furthermore, paragraphs 5 and 6 seem to refer to times prior to February 17th, 1937,—September 10th, 1936, on or about September 10th and September 12th, 1936; and February 17th, 1937; while paragraph 8—

Mr. Swiren: Refers only to February 17th.

Trial Examiner Dudley: (Continuing)—refers to February 17th; which would not interfere with any alleged refusal by the company of collective bargaining in September 1936.

Mr. Swiren: Well, if it is a moot question, there is not much point in going into it, Mr. Examiner. That is true.

Trial Examiner Dudley: Well, I do not see that it is a moot question.

Mr. Swiren: Well, let me renew my motion that the evidence goes in.



Trial Examiner Dudley: All right.

506 Mr. Swiren: And it will establish it. I withdraw my motion at this time.

Trial Examiner Dudley: You withdraw your motion now?

Mr. Swiren: Yes.

Trial Examiner Dudley: Very well. Do you have any other motions that you wish to make?

Mr. Swiren: Not now.

Trial Examiner Dudley: That motion is withdrawn.

Mr. Swiren: I might say for the record that Mr. Aitchison has responded to a subpoena duces tecum, and has brought with him all of the items specified in the subpoena that he had in his possession. There are a few of them, which he does not have in his possession, that he could not bring. The additional items that he does not have in his possession, that I have, are available of course.

Trial Examiner Dudley: Who is Mr. Aitchison?

Mr. Swiren: Mr. Aitchison is president of the respondent corporation. Of course the items that I have, that were specified in his subpoena, are at the disposal of the Board.

Trial Examiner Dudley: Now, Mr. Swiren, may I ask, before the attorney for the Board starts bringing out the facts regarding jurisdiction: is there any stipulation into which counsel may enter, that may save us some time?

Mr. Swiren: Yes, I think there are a number of stipulations.

507 Trial Examiner Dudley: What are they?

Mr. Swiren: I think we can perhaps stipulate to the substantial facts with respect to commerce; to the facts with respect to the seizure by force and violence of the plant of the respondent; to the court proceedings which then ensued, and preceded the alleged failure to reinstate—

Trial Examiner Dudley: Let us take first the stipulation regarding commerce. Let us take them one at a time.

Mr. Swiren: My suggestion, if the Examiner please, was to take them as a unit.

Trial Examiner Dudley: Oh.

Mr. Swiren: We do not care to stipulate unless the government is willing to do the same with respect to the facts that they know. I might say in that connection that we were not impressed by the suggestion in the complaint that while we were engaged in normal operations, we discharged men, as set out in paragraph 8; when every school boy who was



able to read the papers during that period, in any metropolitan center in the United States, knew that there was a violent sit-down strike at Fansteel.

Mr. Walsh: I am willing to stipulate with the respondent that on February 17th, at the time when the respondent attempted to discharge its employees, named in paragraph 8 of the complaint, there was a strike in progress; and that there were no normal operations of the company going

on.

508 Mr. Swiren: That is not enough.

Mr. Walsh: How is that?

Mr. Swiren: That is not enough.

Mr. Walsh: I will further stipulate that for the next succeeding nine days the company engaged in no operations except laboratory experiments.

Mr. Swiren: Will you stipulate as to the men who seized the plant by force.

Trial Examiner Dudley: Do you mean, as to their identity?

Mr. Swiren: Yes.

Mr. Walsh: No, I will not stipulate that, because I do not know.

Mr. Swiren: Well then, we had better find out from the witness stand.

Mr. Walsh: That is all right with me.

Trial Examiner Dudley: Well, I will ask again, are there any stipulations into which counsel can enter, that will save us time?

Mr. Swiren: I do not know of any, under the circumstances.

Mr. Walsh: I of course cannot stipulate the facts that I do not know. At this time may we have a short recess, if the Examiner please.

(A short recess was taken.)

Trial Examiner Dudley: Are both counsel present?

Mr. Walsh: Yes.

509 Mr. Swiren: Yes, your Honor.

Trial Examiner Dudley: The hearing is now called to order.

Mr. Walsh: If the Examiner please, during the recess period I have been served with an injunctive order issuing out of the Circuit Court of Lake County, along with a writ issuing out of that Court, enjoining the progress of this

hearing before the National Labor Relations Board, in the matter of the Fansteel Metallurgical Corporation, and the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 66, until the conclusion of the hearing which is now proceeding in the Circuit Court of Lake County.

I will further say, I am advised by counsel for the respondent that in all probability the litigation in that Court can be terminated during the day today, although possibly it may run over until tomorrow. I would suggest that, in deference to the writ issued from the Circuit Court of Lake County, we in all respects comply with it, and cease and desist the hearing of this case until at least tomorrow morning; at which time, if that hearing is still in progress, I would move for a further adjournment.

Trial Examiner Dudley: You move, then, that we adjourn this hearing until tomorrow morning?

Mr. Walsh: I move that we adjourn until tomorrow morning.

510 Mr. Swiren: So that the Examiner—

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: I have no objection, but so that the Examiner may know the facts, I think I ought to say that at the inception of the hearing before the Circuit Court, we suggested, in the interests of saving time, that the parties be heard with respect to both matters pending, namely, the contempt proceeding and the application for final decree, knowing that that would shorten the hearing by about two or three days. That however was objected to at that time. Consequently, so far as this hearing is concerned, prior to its inception we offered to stipulate as to matters which would ordinarily consume, I am advised by the Regional Director, two or three days, in order to shorten the time, and therefore that conflict with the hearing pending in the Circuit Court might be avoided. But I merely state these things so that the Examiner will know that we have no desire to delay the matter unduly, or to extend the hearing beyond what is absolutely essential.

Trial Examiner Dudley: Mr. Walsh, do you want to introduce as an exhibit these writs, or orders?

Mr. Walsh: No, I will not introduce them in this record at this time. I will make copies of the writs, and forward the copies to Washington in our regular procedure; and I will later introduce the writs.

Mr. Swiren: That is all right.

511 Mr. Walsh: I might state for the benefit of counsel, it is my understanding that there has been some discussion in connection with the permanent injunction which will further shorten up the proceedings over there.

Trial Examiner Dudley: To what hour would counsel like to adjourn in the morning; nine o'clock?

Mr. Swiren: I am from out of town, your Honor; I do not live here in Waukegan.

Trial Examiner Dudley: Ten o'clock?

Mr. Swiren: I suggest we try it out at ten o'clock in the morning, and then see. We are convening at nine-thirty over there, so that it is only good sense to make this ten o'clock, to see what happens there.

Trial Examiner Dudley: Very well then; this hearing is now adjourned until ten o'clock tomorrow morning, Daylight Saving Time.

(Thereupon, at 12:25 o'clock p. m., June 7th, 1937, an adjournment was taken until Tuesday, June 8th, 1937, at the hour of 10:00 o'clock a. m.)

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## 513 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80) • •

Room 4, New U. S. Post Office  
Building,  
Waukegan, Illinois,  
Tuesday, June 8th, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock a. m.

## Report:

Tilford E. Dudley, Trial Examiner.

## Appearances:

William R. Walsh, Regional Attorney, on behalf of the  
National Labor Relations Board.

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## PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show the convening of the hearing.

Mr. Walsh: If the Examiner please, counsel for the Board has been advised that the hearing in the Circuit Court of Lake County is still in progress this morning, but that there is a very good prospect that that hearing will be concluded during the day. I therefore suggest, in deference to the injunction issued by the Circuit Court of Lake County, that this hearing be now continued until ten o'clock tomorrow morning.

Trial Examiner Dudley: The motion is granted.

(Thereupon, at 10:05 o'clock a. m., June 8th, 1937, the hearing in the above entitled matter was adjourned until Wednesday, June 9th, 1937, at the hour of 10:00 o'clock a. m.)

517 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80) • •

Room 4, New U. S. Post Office  
Building,  
Waukegan, Illinois,  
Wednesday, June 9th, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the  
National Labor Relations Board.

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PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show that the hearing is now reconvened. At this time we will take a recess.

(A short recess was taken.)

Trial Examiner Dudley: Let the record show that a further recess is taken at this time until one-thirty o'clock this afternoon.

(Thereupon, at 11:00 o'clock a. m., a recess was taken until 1:30 o'clock p. m.)

After Recess.

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Also Present:

Max Swiren.

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Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, I have now received the official designation of the Trial Examiner. Does counsel desire to see it?

Mr. Swiren: I do not have the slightest doubt but what it is a proper order.

Mr. Walsh: I will hand it to the reporter, and ask that it be received in evidence as Board's Exhibit 1-H. I believe the record of yesterday shows that it was offered.

519 Trial Examiner Dudley: Is there any objection to the admission of this document in evidence?

Mr. Swiren: No.

Trial Examiner Dudley: Let the record show that it is received as Board's Exhibit 1-H.

Mr. Swiren: If the Examiner please, before we proceed further at this time, I would like to say that the hearing before the Circuit Court of Lake County has not quite concluded. They are going on again at two o'clock for the purpose of passing on the appeal bonds for the men who were sentenced for contempt yesterday; as well as to enter the formal order confirming the oral minute entry of yesterday; and the final decree; and I suspect that will not take more than hour, or thereabouts. I thought that we ought to go ahead at this time, and try to stipulate, and cover as much of the ground as we could, in the hope of expediting the hearing, notwithstanding the fact that that other hearing, as I say, has not quite been completed; and then we can go forward later in the afternoon with any testimony that Mr. Walsh has to offer. By that time that hearing ought to be all over, and my associates available here.

Trial Examiner Dudley: Is there any objection to that procedure?

Mr. Walsh: The only thought I have in mind is that Mr. Swiren has advised me that they will move the Circuit  
520 Court of Lake County to dismiss the bill of complaint seeking to enjoin the progress of this hearing.

Mr. Swiren: Just as soon as the other hearing is completed, which as I say will probably be in the next couple of hours—

Mr. Walsh: All right.

Mr. Swiren: (Continuing)—we will ask for an order dissolving the injunction instanter and dismissing the proceeding.

Mr. Walsh: And you will furnish me with a copy, so that I can introduce it into our record.

Mr. Swiren: Oh, yes.

Mr. Walsh: That is a copy of the minute, or order, or whatever the court has entered.

Mr. Swiren: I shall be glad to, or I will stipulate that it has been done; either way.



Mr. Walsh: All right.

Trial Examiner Dudley: Then let us declare a recess, while you discuss the stipulation.

Mr. Swiren: Very well.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: I will offer into evidence at this time as Board's Exhibit No. 2, Form 10-K of the United States Securities and Exchange Commission, filed with the Commission April 27th, 1936; and also part of Form 10-K of the Securities and Exchange Commission, filed with the Commission April 26th, 1937.

I will offer into evidence as BOARD'S EXHIBIT NO. 3, an excerpt from Form 10 of the Securities and Exchange Commission filed with the Commissioner on December 24th, 1935.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection to Board's Exhibits 2 and 3.

Trial Examiner Dudley: There being no objection, the exhibits are received in evidence.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 2 and 3, respectively.)

Mr. Walsh: I will offer into evidence at this time BOARD'S EXHIBIT NO. 4, which is a photostatic copy of Standard Corporation Records, pages 1019 and 1020, purporting to be statistics of the Fansteel Metallurgical Corporation, as compiled and published by Standard Statistics.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: Yes, that is objected to upon the ground that it is entirely immaterial to any of the issues in this case; and further, upon the ground that its accuracy is not substantiated by any witness; nor does it come from the respondent, but purports merely to be information compiled by some outside agency.

522 Trial Examiner Dudley: The objection is overruled, and the document is admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 4.)

Mr. Swiren: Now, if the Examiner please, I want to take this opportunity to request of the Examiner, in accordance with the regulations, the issuance of the subpoenas and subpoenas duces tecum, applied for in our application filed on June 3rd, 1937 with Leonard C. Bajork, XIIIth Region Re-

gional Director, which appears as Exhibit 1-G, presented by the Board.

Having in mind the very brief interval permitted by the Board to elapse from the date of its complaint—or the date of the amended charge upon which the complaint rests, and the date fixed for hearing, it seems to me that, in order to secure a fair hearing, and certainly to insure recognition of the constitutional right of the respondent to due process, the issuance of these subpoenas should have been expedited.

Delay will undoubtedly be encountered in the matter of serving these subpoenas, in view of the large number of persons involved; and I now serve notice on counsel for the Board that we shall insist upon the issuance of the subpoenas, and an adequate period in which to serve the subpoenas on the parties named therein, before proceeding with our case.

I ask the Examiner to communicate with the Board 523 very promptly, or to have the attorney for the Board communicate with the Board promptly, to the end that we do not have any delay in the hearing, and that the subpoenas be issued and delivered to us for service forthwith.

Trial Examiner Dudley: Mr. Walsh, you will take this matter up with the Board, will you?

Mr. Walsh: Yes, Mr. Examiner. I will communicate with the Board, and obtain as quickly as I can their answer, and their order as to the granting or denying of counsel's application; and if the application is granted, I will ask them to use all haste in getting the subpoenas to counsel,—such subpoenas as they desire to issue.

If the application is granted, and you find yourself short of time, why, I will be willing to work out any satisfactory arrangement to give you ample time to serve such subpoenas as the Board may issue.

Mr. Swiren: And of course, if necessary subpoenas be refused by the Board, we shall feel free to take whatever steps may be necessary to insure a fair hearing to our client.

Mr. Walsh: I would expect counsel to do nothing else.

Trial Examiner Dudley: Is there anything else at this time? Are there any other exhibits to be offered?

Mr. Walsh: I have some material here that is usually put in, in these cases.

Mr. Swiren: If you want to stipulate that strikes are 524 not profitable, either for business or for labor, I will so stipulate.

Mr. Walsh: Take that stipulation down, Mr. Reporter, please. Counsel for respondent stipulates that strikes are not profitable, either for business or for labor.

Mr. Swiren: Yes.

Trial Examiner Dudley: Do you so stipulate?

Mr. Swiren: Yes. I suggest, before you offer anything else here, that you submit it to us, and give us a chance to look at it. I think that will save some time, and may obviate objection.

Mr. Walsh: Very well.

Mr. Swiren: Take this for the record, Mr. Reporter. I take it that Mr. Aitchison is now excused—

Trial Examiner Dudley: This is off the record, Mr. Reporter.

The Reporter: Counsel said it was for the record, your Honor.

Trial Examiner Dudley: No; not for the record.

Mr. Swiren: Are you taking this, Mr. Reporter? I said I wanted this for the record.

Trial Examiner Dudley: I am sorry. I misunderstood.

Mr. Swiren: I take it the record may show that Mr. Aitchison is now excused from producing the following items appearing in his subpoena duces tecum:

525 No. 1; records of outbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 2; records of inbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 3; summary of outbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 4; summary of inbound shipments.

No. 5; combined summary.

No. 8, various financial statements and accounts.

Mr. Walsh: That is right.

Trial Examiner Dudley: The record may show that he is excused, as pertaining to the items named.

Mr. Walsh: At this time if the Examiner please, I suggest that we adjourn until ninety-thirty tomorrow morning.

Trial Examiner Dudley: I declare the hearing adjourned at this time until nine-thirty o'clock tomorrow morning, Thursday, June 10th, Daylight Saving Time.

(Thereupon, at 3:50 o'clock p. m., Wednesday, June 9th, 1937, the above entitled matter was adjourned until Thursday, June 10th, 1937, at the hour of 9:30 o'clock a. m., Room 4, New Post Office Building, Waukegan, Illinois.)

## 529 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80.) • •

Room 4, New U. S. Post Office Building,  
Waukegan, Illinois,  
Thursday, June 10th, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

## 530

## PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show that the hearing has been convened at this time, and adjourned to the Jury Room of the Lake County Circuit Court, in the Lake County Court House.

(Thereupon the hearing was adjourned to the Jury Room of the Lake County Circuit Court, in the Lake County Court House, and was resumed at 10:15 a. m.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, at this time I offer for the record the stipulation discussed by counsel yesterday, and ask that it be marked as BOARD'S EXHIBIT NO. ....

Trial Examiner Dudley: 5.

Mr. Walsh: —5, concerning the facts constituting the company's operations, the shipment of raw materials into the plant, and the shipment of finished products out of the plant. The stipulation also covers other matters.

I offer it in evidence.

Mr. Swiren: I take it the entire stipulation is offered.

Mr. Walsh: Yes.

Mr. Swiren: There is no objection.

Mr. Walsh: The entire stipulation is offered.

Trial Examiner Dudley: It is admitted, then, and will be designated as BOARD'S EXHIBIT NO. 5.

531 Mr. Walsh: And it is understood that it will be re-copied.

Mr. Swiren: Yes.

Mr. Walsh: And that counsel will sign the corrected draft.

Mr. Swiren: Yes.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 5.)

Mr. Swiren: May I state for the record, if the Examiner please, that on the 3rd day of June, 1937, I made service on Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, of the answer filed in this cause by respondent; of the motion for adjournment, filed with the Regional Director; and the affidavit in support of that motion; which service was acknowledged by counsel for the lodge, Mr. Paul Glaser.

I should like at this time to present a motion to the Trial Examiner, if I may interrupt at this point to do so, and as a preliminary to that motion I want to say that, as set out in our answer, proceedings have been pending in the Circuit Court of Lake County entitled Fansteel Metallurgical Corporation, a New York corporation, plaintiff, versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al., defendants, No. 37551.

In that case an order of commitment for contempt was duly entered on the 8th day of June, A. D. 1937, containing  
532 certain findings, determinations and adjudications by that court; and subsequently, on the 9th day of June, A. D. 1937, there was duly entered in that proceeding a final decree containing certain findings, determinations and adjudications.

I should like to offer certified copies of both the order referred to, and the final decree; and on basis of those instruments, the order and the decree entered by the Circuit Court of Lake County, move to strike from the complaint—

Trial Examiner Dudley: You are offering them in evidence are you?

Mr. Swiren: Yes.



Trial Examiner Dudley: Suppose you offer them first.

Mr. Swiren: Very well.

Trial Examiner Dudley: And then make your motion separately.

Mr. Keele: We have just sent for them, your Honor. That is why we digressed for a moment.

Mr. Swiren: I have just sent for them.

Trial Examiner Dudley: Very well. Off the record.

(There was a brief discussion off the record.)

Trial Examiner Dudley: Proceed.

Mr. Swiren: May I temporarily tender the original order and final decree which the clerk has permitted to be exhibited temporarily, and then substitute certified copies thereof as soon as they are provided by the clerk of the Court,— 533 which should be later this morning.

The documents being offered are the judgment order upon the contempt hearing in the case already identified, in the Circuit Court of Lake County, No. 37551, entered at Waukegan, Illinois on the 8th day of June, A. D. 1937 by Theodore Forby, Judge of that court—

Trial Examiner Dudley: As Respondent's Exhibit No. 1?

Mr. Swiren: Respondent's Exhibit No. 1. Let us not mark these original court documents.

Trial Examiner Dudley: No.

Mr. Swiren: We will mark the certified copies.

Trial Examiner Dudley: That first one is the order?

Mr. Swiren: The order; and I will ask that the final decree be received and marked as RESPONDENT'S EXHIBIT NO. 2, being the final decree entered in the cause already identified, No. 37551, in the Circuit Court of Lake County, Illinois, entered at Waukegan, Illinois, the 9th day of June, A. D. 1937 by Theodore Forby, Judge of that court.

Trial Examiner Dudley: Is there any objection, Mr. Walsh?

Mr. Walsh: I have no objection, no, Mr. Examiner, except as to the materiality. I may say that they are not material.

Mr. Swiren: Well, are you objecting or are you not, Mr. Walsh?

Mr. Walsh: Well, I will withdraw what I said, and state my objection all over again. I object, if the Examiner 534 please, to the introduction of any or either of these papers in evidence, on the ground that they are not material to any issue before this Board.

Mr. Swiren: Mr. Examiner—



Trial Examiner Dudley: Just a moment, Mr. Swiren. You may make a short statement as to your reason for moving the introduction of these documents.

Mr. Swiren: If the Examiner please, the proceedings which we have already referred to, before the Circuit Court of Lake County, are outlined in our answer and brought into issue by the answer.

The plaintiff in that case was Fansteel Metallurgical Corporation, respondents before the Board in this hearing. The principal defendant, or one of the principal defendants, was Lodge No. 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, which is the party presenting the charge upon which the complaint is based, and one of the parties to this proceeding.

There was involved in that proceeding, first, the occupation of the plant of respondent on February 17th, 1937 by a large number of men, many of whom are named in paragraphs 8 and 11 of the complaint, and all of whom were acting at the instigation and direction of Lodge No. 66, already referred to.

There was also involved the discharge of the men who 535 so seized the plant on that date. As Mr. Keele points out, most of the men mentioned in paragraphs 8 and 11 of the complaint, were men thus involved in the seizure, and found so to be involved by the order heretofore referred to as Respondent's Exhibit No. 1.

There was further involved the violence in connection with the seizure and resistance of these men to the law enforcement officers endeavoring to execute a writ of injunction issued by the Circuit Court of Lake County, directing them to leave the premises and restore possession to the respondent, as their lawful owner. There was resistance to the service by the sheriff of the writ of attachment requiring that those men be brought before the Circuit Court of Lake County, to show cause, if any they had, why they should not be held in contempt of that court for violating the injunctional order, and interfering with the sheriff in its execution.

That case also involved the determination between the parties as to the legality or illegality of the seizure and retention of the premises by those men, under the direction of said Lodge 66, and constitutes, with respect to these and the other matters set out in the order and decree offered respectively as Respondent's Exhibits Nos. 1 and 2 herein, a final and conclusive determination of those facts as between the par-

ties; and those findings constitute *res adjudicata* of the questions to which I am shortly to refer.

536 In that connection I think it is most important to point out that both the order and the decree offered contain a final adjudication as between the corporation, the union and those men, as to their discharge on February 17, 1937, and the reason for the discharge. Those matters of course are all vital issues in this very case.

Now, if the men were properly discharged, and not in violation of the Act, then for the most part the remaining questions become moot, as the evidence will shortly demonstrate.

Trial Examiner Dudley: I will admit both documents into evidence as Respondent's Exhibits Nos. 1 and 2 respectively.

Mr. Walsh: Let the record show my exception, if the Examiner please.

Mr. Swiren: We had it understood, for the purpose of the record, Mr. Walsh, that there would be an exception noted automatically in the case of every adverse ruling, so as to save time.

Mr. Walsh: I had not made such a request, but I will, to guard against failure to note an exception from time to time.

Mr. Keele: Then may the record show that it is stipulated by and between counsel that in the case of any motion—

Mr. Swiren: Any adverse ruling.

Mr. Keele: —or any objection, adversely ruled upon—

Mr. Swiren: Or any other adverse ruling.

Mr. Keele: —or any other adverse ruling, an exception 537 will be noted, so as to save time. Is that agreeable, counsel, to have the record show that?

Mr. Walsh: That is all right; that is perfectly all right with me.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 1 and 2 respectively.)

Mr. Swiren: Now, if the Examiner please, upon the basis of Respondent's Exhibits Nos. 1 and 2, I desire at this time to move that so much of the complaint as is inconsistent with the findings, or touches upon the subject matter of the findings and adjudications of the order and decree, including specifically, but not exclusively, so much of paragraphs 8 and 11 as refers to the men with respect to whom findings and adjudications are made in the order and/or decree, be stricken, and disregarded in this hearing.

Trial Examiner Dudley: Mr. Walsh?

Mr. Walsh: Does the Examiner desire to hear from me on that question?

Trial Examiner Dudley: Do you want to make a statement?

Mr. Walsh: Yes, I do.

Trial Examiner Dudley: Make a brief statement.

Mr. Walsh: The Trial Examiner will recall that paragraphs 8 and 11 refer to the discharge and refusal to reinstate certain persons who it is alleged engaged in the strike.

538 I might state this, that all of the proceedings had between the corporation and Lodge 66 and its members, have no bearing on the issues before this Board; and any facts determined in that proceeding can in no wise bind the National Labor Relations Board, as to what those facts are.

Therefore the objection to the introduction and reception into evidence of these exhibits, on the ground of materiality, would likewise apply; or I should say, the reasons for that objection, would likewise apply to a denial of the motion to strike the paragraphs referred to by Mr. Swiren; and it is on those grounds generally that I would ask Mr. Swiren's motion be denied.

Mr. Swiren: If the Examiner please, both the party making the charge, which automatically makes it a party to this proceeding, and the men on whose behalf the complaint is brought, were parties to the proceeding for a determination of these very issues between themselves and the respondent.

We have here a situation in which a lawsuit has ensued between an employee, or a group of employees, and the employer, one of the issues of which was their discharge; and the court has now, as between those parties, adjudicated and determined, first, that there was a discharge; and second, that the discharge occurred and was made by reason of the violent and unlawful seizure of respondent's property by these employees, and their unlawful withholding of that  
539 property from respondent.

I cannot think of anything more material than a determination between the two real parties in interest, the employer and the employees.

Trial Examiner Dudley: I will rule that respondent's Exhibits 1 and 2 may be material insofar as they may give some evidence about the facts which are in controversy in this hearing; but that findings of fact by the Circuit Court of Lake County, Illinois are not necessarily conclusive upon the

findings to be made by this Board, inasmuch as this is a proceeding involving different parties to the extent of the position of the Board, and also involving different laws, and therefore different aspects of the facts, some of which may be the same, or may not be the same in the two hearings with which we are concerned.

The motion is therefore denied.

Mr. Swiren: Exception.

Trial Examiner Dudley: Are there any other motions at this time?

Mr. Walsh: I would like to introduce in evidence at this time, if the Examiner please, a copy, not certified, and I do not myself attest the correctness of it because I have not been able to take the time to check it; but it is a copy of the complaint in a certain cause in the Circuit Court of Lake County entitled Fansteel Metallurgical Corporation, 540 plaintiff, versus National Labor Relations Board, et al., No. 37939.

I will offer the copy in evidence.

Mr. Swiren: We do not care about the certification. We will check it.

Mr. Walsh: Counsel may check it, and check it during the day.

Mr. Keele: Yes.

Mr. Walsh: I also wish at this time to offer in evidence the injunctional writ issued in that same cause. This happens to be the original writ. I do not know upon whom attempted service was made. I offer this document as Board's Exhibit No. 7. I do not have in my file a copy of the injunctional order.

Mr. Keele: We will supply it.

Mr. Walsh: Very well; I will offer it later on. Let the record show that I will offer as Board's Exhibit No. 8, the injunctional order, and that will be supplied later, so that they will be all together.

Trial Examiner Dudley: Very well. Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: The documents may be so admitted, then, and designated as Board's Exhibits Nos. 6, 7 and 8 respectively.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 6, 7 and 8 respectively.)

541 Trial Examiner Dudley: Now, are there any other motions, exhibits, or miscellaneous matters to come before the Board at this time? I might state for the purpose of the record, since Mr. Walsh is uncertain about the service of this writ, that it was served on me. It was served on me in the Federal Post Office, located in Waukegan, Illinois.

Mr. Walsh: By an alleged deputy sheriff.

Trial Examiner Dudley: By an alleged deputy sheriff, or by one who purported to be a deputy sheriff.

Mr. Swiren: If the Examiner please, I take it that knowledge of a writ is sufficient, however it is obtained.

Mr. Walsh: Well, be that as it may we obeyed the writ.

Mr. Keele: We will stipulate that this shall have the same effect as though it were certified.

Mr. Swiren: You do not have to certify it. We do not object.

Trial Examiner Dudley: Do you have any question as to its accuracy?

Mr. Walsh: All I know is that I gave it to a stenographer, and told her to copy it and be sure she got it right; and she said she did.

Trial Examiner Dudley: Do you not think we ought to have a better statement to the effect that it is a correct copy, if we are going to admit it at all?

Mr. Swiren: We will check it.

542 Mr. Keele: There are one or two points here that I am not just sure of.

Trial Examiner Dudley: I think counsel should check it.

Mr. Walsh: Yes.

Trial Examiner Dudley: We want to be sure that it is accurate.

Mr. Keele: Very well, then, we will check it, and then stipulate later.

Mr. Walsh: All right.

Mr. Swiren: At this time, if the Examiner please, I desire to renew the application made yesterday for subpoenas and subpoenas duces tecum, for the summoning of witnesses and the gathering of evidence on behalf of respondent.

Trial Examiner Dudley: I understand that Mr. Walsh has telegraphed Washington—he did so last night—for a decision on the application for these subpoenas.

Mr. Walsh: That is correct; I have so telegraphed, but I have not yet received a reply.

Trial Examiner Dudley: Are there any other motions, ex-



hibits, or similar matters to come before the Board at this time? If not, as I indicated last night, there are some questions which I would like to ask Mr. Aitchison.

Mr. Walsh: I will call Mr. Aitchison as a witness at this time. Will you swear the witness, please, Mr. Examiner?

ROBERT J. AITCHISON, called as a witness for the  
543 National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh): Will you state your full name, please, Mr. Aitchison?

A. Robert J. Aitchison.

Q. Where do you live?

A. In Glencoe, Illinois.

Q. You are president of Fansteel Metallurgical Corporation, are you?

A. Yes.

Q. And have been since 1932, I believe?

A. No, sir, I have been president since May, 1936.

Q. Oh, I see.

A. I was vice president and general manager since February, 1932, up to May, 1936.

Q. I see. Then you are familiar with the business done by the company?

A. Yes, sir.

Q. Will you describe for us the physical properties which make up your plant at North Chicago, Illinois?

A. The plant at North Chicago consists of approximately seven and a half acres of ground, and 15 buildings. Two of them are concrete, brick and steel construction. Two of them are corrugated iron and steel type buildings. One  
544 is a wooden building—no, three of them are corrugated iron, instead of two. All of the rest are either frame, or old brick mill-type construction, with a stone foundation.

Q. Now, the type of business that your company does, is what?

A. We describe our business as manufacturers of rare metals. We extract from ores, or in some instances intermediate products, the metal itself, and make it into ingots, rods, wire, sheet, and fabricated products constructed out of either wire, rods or sheet.



Q. Now, the main products which you use are tungsten and tantalum. That constitutes the greater part of your business does it not?

A. That is the biggest part, yes, sir.

Q. Now, your manufacturing processes in general are what? Just describe the manufacturing processes in general for tungsten for instance.

A. Well, the processes are similar on all of these metals in the sense that the metals are of an extremely high melting point, and there is no known methods of smelting or extraction such as is employed with the base metals of iron or lead. All of these are extracted by chemical processes, in which the ores are converted into salts, or fluorides; in some instances they are fully dissolved in acids, and precipitated out, or reduced by crystallization or fractional crystallization; and eventually reduced to powder metal, 545 which powder metal is pressed into ingots, and formed into a solid mass by a sintering process; and then from the sintered ingots we roll sheet, or we swedge it into bars, or we draw it into wire.

Q. Now, those pressed powder metal ingots are of about what weight?

A. Well, that depends on the metal that we are processing.

Q. Take tungsten for instance.

A. Oh, up to one kilo, a kilo being 2.2 pounds. With tantalum the largest bar that we make is 2900 grams, which is just 700 grams more than one kilo.

Q. Now, Mr. Aitchison, as I understand it, the raw material moves through your chemical department, and processes are applied to it there; and then the powder is pressed into ingots, and they are put in sintering furnaces.

A. Yes, sir, which has the effect of welding them or annealing them together into a solid mass.

Q. And then those ingots—

A. Those weights are purely in the form of ingots.

Q. Yes. And then those ingots are taken and heated, and put through a swedging process, are they not?

A. Yes, sir.

Q. And that swedging process consists of drawing the ingots out?

A. We call it cold swedging, although it is done at high temperatures, but we call it cold in the sense that it does 546 not melt the metal.

Q. The temperatures are relatively high?

A. Very high.

Q. Those temperatures run up to 2600 degrees, do they not?

A. Oh, they run up to 6,000 and 7,000 degrees Fahrenheit.

Q. They do?

A. Yes, sir.

Q. And at 7,000 degrees Fahrenheit, do you have a cold swedging operation?

A. Oh, no. We swedge it at about 2200 degrees—or rather, we swedge at between 1600 and 2200 degrees. That is cold swedging in relation to a temperature of 7,000 degrees.

Q. I see. Then after your tungsten—referring again to tungsten—is swedged down, it goes to various other departments for other processes, does it not?

A. After the swedging of the ingots, they are swedged into round bars, and each swedging operation elongates the bar and reduces the diameter.

Q. And so when you finish with a one-kilo ingot, you have a long rod, or several long rods?

A. Round rods.

Q. (Continuing.) Round rods, of diameters varying with the purpose for which they are to be used; is that correct?

A. Yes, sir, that is right. I might state that the original dimensions of these ingots are 5/8ths of an inch square 547 by about 7½ to 9 inches long.

Q. And the size to which they are reduced will vary—I mean the length of the rods will vary in accordance to the size to which they are reduced?

A. With the diameter, yes, sir.

Q. Now, assuming that we take one of these bars through the contact department. Supposing a tungsten bar is designed for contact points. Tell us what happens.

A. Well, assuming that we are going to have contact points .156 in diameter, we start with a rod slightly in excess of that.

Q. Yes.

A. And then the rod is sent to the cutting department, where it is sliced into thin disks.

Q. Those disks being about .150 in diameter; is that correct?

A. Well, they are finished to whatever diameter dimension you are seeking.

Q. And their thickness would be about what; about how thick?

A. From 25/1000ths to 40/000ths.

Q. Of an inch?

A. Yes, sir.

Q. Now, after they have finished this slicing process, what next is done to them?

A. Well, if they are making contacts, some of them have to be mounted on a screw; some have to be mounted on what we call a tack, or a rivet; and some of them are mounted directly on breaker-arm devices. We manufacture the screws, and we manufacture the rivets, but we do not manufacture the breaker-arms; those are supplied by the ignition people. We affix the contacts to the head of the screw, or the breaker-arm, by a brazing process.

Q. And that process is performed in what manner, generally?

A. Well, you mount the screw with a piece of brazing material, copper or an alloy, and put the piece of tungsten on top of it, and run it through a furnace of a temperature that will cause the copper to melt, and then as it cools it sticks the contact to the mounting material.

Q. The temperature at which copper melts is considerably lower than that at which tungsten melts, and therefore there is no danger of the tungsten melting?

A. That is about 900 to 1,000 degrees centigrade.

Q. Then after that mounting is done, there is a further operation on them before they are finished, is there not?

A. Well, in some instances they have to be side-ground, and smoothed; and in some instances they are crowned, so as to perfect the contact as they come together. One of them is slightly rounded; that is the crowning. Then they are inspected, packed and shipped.

Q. Inspected, packed and shipped?

549 A. Yes.

Q. And then they are gone?

A. Yes, sir.

Q. Now, the operations in the tantalum are about the same, I assume; through the sintering department—through the chemical and sintering departments generally, are they not?

A. Well, the processes in general are the same, although they are not exactly the same.

Q. Well, at various degrees of temperature, I suppose.

A. No, not in the temperature; there are a great many variations.

Q. Well, for instance your tungsten is sintered in a furnace charged with hydrogen, and your tantalum is sintered in a vacuum, is it not?

A. Yes, sir.

Q. All right. Just go ahead.

A. One of them can be worked in hydrogen, and one has to be worked in a vacuum.

Q. Now, your processes in general with swedging the tantalum: are they the same as with the tungsten?

A. Well, there is much more tantalum goes through the rolling process.

Q. Because it in large part is fabricated, is it not?

A. Yes, sir, either by us or by others.

Q. It is either fabricated by you, or prepared in a 550 manner so that someone else can fabricate it?

A. Yes, sir.

Q. Now, referring to the tantalum: describe in general its uses. It is rather a new metal, is it not, and rather a rare metal?

A. Well, it is not so new, but it is very little known.

Q. I see.

A. It is not new in the sense that before they had tungsten filament lamps, there was a tantalum filament used, but tungsten followed so closely on the heels of tantalum that it it did not amount to very much. But tantalum has two outstanding characteristics. One of them is resistance to corrosion of practically every acid or chemical that is known, except a combination of sulphuric acid and hydrofluoric; and because of that, it is suitable for use in any operation where the material is subject to highly corrosive substances.

As an illustration, in the making of rayon they take the cellulose and extrude it through a small spinneret, that has very small holes; and each one of those constitutes a filament or thread when it is finally spun; but the cellulose that comes through contains approximately 18 per cent sulphuric acid, and therefore it needs one of the two metals in the world that will withstand that acid, one being gold and the other being tantalum.

Another use naturally is in the chemical class, where  
551 some of their processes subject articles to severe corrosion; and corrosion means contamination of the product. It is made into seamless tubes or coils; heat-exchangers; and equipment of that nature; so that the reactions can be carried on with those corrosive substances without contamination and without a short life of the equipment.

Another feature of it is its electronic properties, that make it superior for power tubes, and the perfection of transmission, where that is required; partly because of its electronic properties, and partly because, when it is heated, it will absorb any gas that remains in the tube. No matter how perfect the evacuation of the tube, whether metal or glass, may be, there are still traces, minute traces of impurities. When you have tantalum anodes in there, and they are heated, they attract the gas and absorb it and hold it and never let it go; which gives the last degree of perfection.

It is used in medical tubes, including these fever tubes which have recently been introduced into the market.

Tantalum also has another characteristic in the sense that it does not wed readily with other metals.

Q. Does not what?

A. Does not wed readily; that is, it does not stick to other metals.

Q. I see.

A. And therefore it has a very important place in  
552 the making of high-speed tool material, in the sense that as the chip, the hot chip, in machining the metal, passes over the top of the hardened carbides, the chip does not tend to stick to the tantalum carbide tool, but slides over rather than sticks, thereby reducing the possibility of there being any gouging-out just behind the cutting edge, preventing the edge moving, and giving longer life; and in many instances it will stand higher speeds, especially on steels where the tendency is to stick, and on cast iron, alloy cast iron, where the combination of steel and iron has the same effect.

Now, did you want to inquire about molybdenum?

Q. Yes, I was just going to ask you about that. Tell us about that, please.

A. Because of the nature of the ore supply of molybdenum, which is largely concentrated with the Climax Molybdenum Company, we start there with an intermediate product, molybdic oxide. We start with molybdic oxide, reduce it to a metal, forming the ingots in the same way as we do

with the tungsten; swedge it; and reduce it to rods. With the molybdenum we largely draw it to fine wire, and by "fine wire" I mean wire that runs from .002 to .006 in diameter, largely used for the innermost grid winding on receiving tubes.

Q. On what kind of apparatus?

A. Radio receiving tubes.

Q. Oh, radio receiving tubes.

553 A. Yes, sir. It is also used in heat control devices, to some extent.

Q. Then you have other products, consisting of cesium and rubidium, have you not?

A. Yes, sir, but they are minor.

Q. Those are minor?

A. Yes, sir, in comparison with the others.

Q. Now, getting back to your plant: I will read you a list of the departments in your plant, and ask you to state if I have them correctly. Wire Department; Tantalum Department; Contact Department; Tungsten Department; Chemical Department; Railway Signal Department; Machine Shop; Tool Room; Shipping; Maintenance.

A. Yard.

Q. Yard?

A. Watchman; Watch Service. That is hardly a department, though.

Q. What does the Yard Department do, Mr. Aitchison?

A. Well, there are seven and a half acres of ground there. They do everything, from unloading cars and moving stuff, to hauling things from here to there; unloading coal, and so forth; and in the boiler shop and the steam plant; they generally make themselves useful.

Q. Well now, going over this list, take the Wire Department. I presume that is where the rods are drawn into  
554 wire; is that right?

A. Yes, sir. You refer to the Tantalum Department. You have got a product there—

Q. That would probably refer to the Tantalum Fabrication Department, would it not?

A. If you call it tantalum fabrication, I would say, yes. Then you have omitted the Sintering Department.

Q. We have not got that in this list, have we?

A. No, sir. You sinter the tantalum, tungsten and molybdenum all in the same department.

Q. I see.



A. Then in the Production Department, that is really a department, the department where you take and reduce them, to metal.

Then how about the laboratory?

Q. Let us see if these will fit in. I have a number of separate departments here.

A. Well, it depends on whether you are going to make the common denominator of what constitutes a department, the operation or the product. If you want to make it to the operation, and forget the product, you just put it in on that basis.

Q. I think that perhaps we had better approach the problem from an operating standpoint, rather than a product standpoint; or an accounting standpoint, where you have 555 to charge certain labor to certain products.

A. We approach it ourselves from an operating standpoint.

Q. You approach it that way.

A. Yes, sir.

Q. Well then, let us start with the wire department. Is that the proper classification for that department?

A. Yes, sir. That would indicate the department in which all of the wire is drawn.

Q. How about the Railway Signals; is that a department?

A. Yes; that is an assembly of miscellaneous items, such as rectifiers, transformers, and things that relate to Railway signals; telephone battery equipment.

Q. Now, the Swedging Department is where all of the products are reduced from ingots to rods; is that right?

A. Yes, sir. Then the Rolling Department would be one.

Q. Yes, I was just coming to that; the Tantalum Rolling Department.

A. Well, we roll tungsten.

Q. You also roll tungsten?

A. (Continuing.) We roll molybdenum, and we roll tantalum.

Q. So then we can just call that all the Rolling Department; is that right?

A. Rolling Department.

Q. All right. Then we have the Fabricating Department, in which tantalum is fabricated. Is there anything else?

556 A. I think I would go beyond that, and say Tantalum Fabricating. You talk about contacts; that is fabricating; and the assembly.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley): Mr. Aitchison, do you have over these different departments, foremen; a foreman for each department, or a superintendent for each department?

A. No.

Q. How are they distinguished from one another, from the point of view of the management, in conducting the plant, or from the point of view of the duties of the men in the plant?

A. We have a limited number of foremen.

Q. How many foreman do you have?

A. There are eight of them, I believe,—eight or nine.

Q. Eight or nine?

A. Yes, sir, and then whenever you find three men working together, one of them is a kind of straw boss, although he is on the hourly payroll, called a leading workman.

Q. Would you consider all of these departments which have been mentioned here, to be in general component parts of the Production Department of your entire plant?

A. Yes, sir.

Q. Then in addition to those, you have your office force of clerical workers?

A. Yes.

557 Q. And then in addition to that, you have your force of—

A. Engineers.

Q. Supervisors—yes, engineers. And then you have supervising managerial employees, I suppose.

A. Yes, sir.

Q. Then what else do you have—engineers, you say?

A. Engineers.

Q. What do the engineers do?

A. Well, practically all of our stuff is made special, and so we have engineers to draft the blueprints, and check the customers' prints; and many times originate and design applications.

Q. And do they work apart from the rest of these departments that you have spoken of?

A. They work in a separate department.

Q. A separate department entirely?

A. Yes, sir.

Q. Is there much difference between these departments, the Wire Department, the Tantalum Department, Contact Department, Railway Signals, Shipping and so forth, which you have mentioned, as to geographical location?

A. Location?

Q. Yes. Do you have certain rooms for example which are used by one department, and certain rooms by another, or are they all in large rooms, with easy geographical contact between them?

A. No, I think that they are fairly readily distinguishable one from another.

Q. Do you transfer men from one department to another?

A. Sometimes.

Q. Is there any particular difference in the rates of pay as between one department and another?

A. We have no standard fixed rate by departments, and when I say that we transfer men from one department to another, I mean that we have always followed this practice for example: if we get slow rather than lay off a lot of the older men, we try to keep the older fellows busy, and lay off the newer ones; and in that way one man might be working on a reduction furnace eight months, and then because of slackness, he would have to work in some other department.

Q. I see.

A. (Continuing.) But he would take the same rate, regardless of where he is.

Q. Is there any outstanding difference in skill as between the different departments, or does it depend more upon the nature of the individual work that the individual man performs?

A. Oh, I think there is a very great difference in skill, yes, sir.

Q. And how does that apply? That is, do you mean that the Yard Department, for example, would include largely laborers.

A. Yes, sir.

A. And the Maintenance Department would include men who keep the machines and so forth in order?

A. Carpenters.

Q. Carpenters?

A. Steamfitters, electricians, and occupations of that kind; and millwrights.

Q. What are your more skilled departments?

A. Well, that is a little bit difficult to describe, in the sense that anybody who works in the Chemical Department has to know when to turn a valve off because the job is done, and not simply because it is half past eleven.

Q. I see.

A. And then in the Sintering Department, working at such tremendously high heats, you have got to have fellows who develop a sort of sixth sense, as to when there are cycles of current that are disturbing their operations. Then when you get into the Contact Department, where they handle these things we have been talking about, .156 in diameter, where we are going to try to place a little contact .156 in diameter, and a thin piece of copper wafer, 1/20000ths thick, on top of the screw, and get them in the center, that takes another type of skill.

560 Q. Yes.

A. Then when we get into wire drawing, where specifications are held as closely as ours are,—for example we are permitted up to 3 per cent out-of-round, and 3 per cent out-of-round on something starting at .002 is not very much; and the stretch is controlled,—a stretch of not less than 1½ths inches, or not more than 1½ths inches.

Q. Now, you have eight or nine foremen for approximately thirteen departments, I would gather from your testimony. That means, does it, that one foreman will have charge of two departments?

A. Yes, sir.

Q. And does he consider those two separate departments, over which he is the head, or does he consider them as just one group of workers who are under his supervision?

A. Oh, I think that they think more of them as a group of workers. A group of workers, I think, would be the way they would regard them.

Q. And you consider this entire group as your production unit?

A. Yes, sir.

Q. Now, will you give me an idea as to how your pay runs in these different departments. For example what are some of the departments that pay the least, and what are some of the departments that pay the most, and which  
561 are on an hourly basis, and which are not?

A. They are all on an hourly basis.

Q. Well, for example, what do your laborers get?

A. I think they start at 40 cents per hour,—or, no. I believe we start the men at 50 cents per hour.

Q. The men?

A. Yes, sir.

Q. (By Mr. Walsh): Laborers?

A. Yes, sir.

Q. (By Trial Examiner Dudley): Male laborers?

A. Yes, sir.

Q. And then how do your laborers increase, as to rates of pay?

A. Well, there are some—

Q. (Continuing.) For instance, they start at 50 cents, and go up to how much, as laborers?

A. Well, that depends on the nature of the job. We have some people who are drawing 90 cents, and better.

Q. As laborers?

A. Oh, no, no.

Q. I mean laborers.

A. Common laborers?

Q. Yes.

A. 60 would be the top.

A. 60 cents?

562 A. Yes, sir.

Q. And what would be some of the other classifications?

Mr. Swiren: If the Examiner please, I have been checking these over, and I think that there are some departments that have not been specifically mentioned. For the sake of getting the record in proper shape, I would like to suggest, unless Mr. Walsh has some objection—

Mr. Walsh: I was about to rearrange my department structure here.

Mr. Swiren: I do not think that the Stock Room, or the Shipping Department, have been mentioned.

Mr. Walsh: Perhaps not.

The Witness: There is an inspection department there also.

Mr. Swiren: We will get to that. Just let me call off the ones that I think are missing, so that we will get the list complete.

Q. (By Mr. Swiren) There is the Stock Room; that is right, is it not?

A. Yes, sir.

Q. Shipping Department.

A. Yes.

Q. Wire Inspection Department.

A. Yes.

Q. Headers & Screw Machine Department.

563 A. He put that all under the Machine Department.  
Mr. Walsh: Machine shop.

Q. (By Mr. Swiren) Well, that is separate from the Tool Room, is it not?

A. Yes. The heading machines are a separate department.

Q. And the disk cutters and set-up section constitutes a department, does it not?

A. Yes, sir.

Q. Contact Department.

A. Yes, sir.

Q. Contact Inspection Department.

A. Yes, sir.

Q. (By Mr. Walsh) What is the distinction between the disk cutters and the contact operation?

A. The disk cutters do nothing but slice off these wafers.

Q. (By Mr. Swiren) And then the set-up people put them on?

A. Yes, the Contact Department.

Mr. Walsh: I see.

A. (Continuing) They get the disks and the screws and put them together.

Q. (By Mr. Walsh) Those would all fall then within the general classification of Contact Department, would they not?

A. Yes, sir.

Q. Under the operations within the Contact Department.

A. That is what I had in mind when I said that if you  
564 are going to class it by product, it is all contact; but if you are going to class it by operation, the man who makes the tack, although he is making it for contacts, is not performing a similar operation to the operation of slicing off the end of a rod.

Q. (By Mr. Swiren) Then there is another department which has been mentioned, but not described, and that is the Laboratory.

A. Yes.

Q. I think it would be helpful if there was a description in the record of how the Laboratory participates, if at all, in production.

A. Well, you can readily see, from the nature of the metals that we handle, and the temperatures at which we work, and the nicety of detail that we must observe, the inspection and



control of fine factors of that kind must be left in the hands of the laboratory, where there is an opportunity to use some judgment, based on what the material is intended to do, or what it is to be used for. A tantalum sheet that is suitable for a spinneret is a very high quality sheet as compared to what we would sell as a plain tantalum sheet; so much of the inspection of the material, power and bars, is handled through the laboratory. If any problem develops, where the bars are becoming hard or soft, or large-grained or small-grained; or wire is short of stretch; or plating does not stick, or something else, their job is to correct that.

Q. (By Mr. Walsh) Now, of course, such a man is a technically trained man, who is able to find the defect, and also able to find the answer to correct it.

A. Yes, it takes either a metallurgist or a chemist, to correct it, rather than the man on the job.

Q. And you have a number of chemists, and a number of metallurgists, I take it.

A. There are 18 employees in the laboratory.

Q. 18 in the laboratory.

A. Yes, sir.

Q. All of whom are technical men,—are they not?

A. Yes, sir.

Q. And they supervise—or in fact control the production?

A. They control the production.

Q. Rather than producing themselves.

A. Yes, sir.

Q. Except in an emergency, that is.

A. Yes, sir. Except for the laboratory, the rest of it would not run.

Mr. Walsh: I understand.

Q. (By Trial Examiner Dudley) Mr. Aitchison, you have testified that your male laborers get 50 cents to 60 cents per hour.

566 A. Laborers?

Q. Male laborers.

A. Yes, sir.

Q. Now, what do some of the other classifications receive?

A. Do you want the extreme; that is do you want the other side of it?

Q. I just want to get the complete picture.

A. Well, in the screw machine operations, they receive 92 cents, and 90 cents. There are just two men.

Q. 92 and 90 cents per hour?

A. How is that?

Q. That is 92 and 90 cents per hour?

A. Yes.

Q. (By Mr. Walsh) There are only two screw machine operators, is that correct?

A. Yes, sir.

Q. Now, how much do the men employed in the Chemical Department get?

Mr. Swiren: Mr. Walsh, if you will tell us what you want we will prepare a schedule for you.

Mr. Walsh: All right. Maybe that would be helpful.

Mr. Swiren: I think that would be much easier and more practical.

Mr. Walsh: Supposing we do this: supposing you furnish us with a schedule showing the wage rates in the Wire 567 Department—

The Witness: Do you mean, the range of wage rates?

Mr. Walsh: Yes.

The Witness: All right.

Mr. Walsh: For instance, ranging from 60 cents, to 70 cents, or whatever it is.

Mr. Swiren: You want the range.

Mr. Walsh: Yes.

Mr. Swiren: All right.

Mr. Walsh: Also the wage rates in the Railway Signal Department; the Swedging Department; the Tantalum Rolling Department—

The Witness: Rolling?

Mr. Walsh: Rolling, and also Fabrication.

The Witness: Tantalum Fabrication.

Mr. Walsh: And the Tool Room; and Machine Shop.

The Witness: Well now, let me see. By "Machine Shop" do you mean the screw machine operators, tool makers, and machinists?

Mr. Swiren: Headers.

Mr. Walsh: I do not know how to break them down.

Mr. Swiren: That is what we call the Header & Screw Machine section.

Mr. Walsh: Also the Chemical; Sintering; Shipping; Stock Room; Tungsten Cutting; Contact Department—

568 The Witness: That is, the assembly, and various operations—inspection?

Mr. Walsh: Yes, assembly, inspection and so forth; crowning, side-grinding, or whatever that operation might be.

Q. (By Mr. Walsh) Now, we have pretty well covered all of the departments, have we not?

A. I think so.

Q. I have not skipped any, have I, Mr. Aitchison?

A. I do not think you have.

Q. I just do not want to miss any.

A. That is a composite of them, I believe.

Q. Then you will furnish us a schedule, please, showing the range of wage rates in these various departments; and if I have skipped any, I will ask that you please fill in the gap. That will be helpful to us.

A. Incidentally, I might say that your range depends on the skill of the people.

Q. Yes.

A. And the nature of the operation.

Q. Many of these operations, I take it, are piece operations, are they not; paid by quantity production?

A. No.

Mr. Swiren: No. You asked that before, and he said it was on an hourly basis.

569 Mr. Walsh: How is that?

Mr. Swiren: You asked that question before and the answer was "hours."

Q. (By Mr. Walsh) All hourly pay?

A. Yes.

Q. All right. Now, your company sells its products through salesmen, does it not?

A. Well, they are more engineers, sales engineers, than they are salesmen.

Q. I see. Well, would you tell us how the sales of the company are effected?

A. Well, because of the special nature of the products, in many instances we really have to go into plants and develop a use for them.

Q. I see.

A. Or put them in, in competition with other materials. As an illustration, if the Ford Motor Company is working on a new distributor system for next year, the next model, we have to furnish material that will stand up under their new electric system, with whatever changes they make. We make different grades of material, different types of material, and therefore the man you might call a salesman of contacts, is really an expert on ignition, or circuits; and he examines the device, and suggests several types of material that perhaps

will work, or perhaps suggest improvements in the  
 570 ignition device, that will relieve the severity of the gas  
 on the contact points; larger condenser capacity, less employment of resistors, and so forth. There just happen to be 32 variables in the average system; and that is one reason why the world is not flooded with people who understand ignition systems. Then if we are successful, when the new models come out we are specified in the blueprints as a supplier. Then, of course, we have got to keep in touch with the purchasing agent, and the Engineering Department, to see that we get some business.

Q. Now, you do not have any sales office, or sales agents, do you, except for sales of the products of one of your subsidiaries?

A. Well, we have sales representatives, a number of sales representatives in connection with the sale of railway signal devices to the railroads.

Q. I see.

A. There are a number of purchasing departments in Cleveland, and we have a commission arrangement with the man in Cleveland, to keep in contact with those departments; and another one in the east keeps in touch with the Pennsylvania, Baltimore & Ohio and Lehigh Valley; and then we have one on the Pacific Coast who keeps in touch with the Santa Fe. But that is a very minor part of the business.

We do have those people, but they are all on commission.  
 571 Q. They are on a commission basis.

A. Yes, sir. Otherwise we sell everything direct from North Chicago. We will use everybody on applications; myself, in some cases; the doctors in charge of the laboratory; and the sales engineers; in some instances we take men out of the shop who are experts on tantalum, and send them to review the application. After all, if somebody is going to put a lot of money into expensive equipment, we have got to be pretty sure that it is going to work.

Q. Surely. Now, what advertising methods do you employ?

A. We have our own advertising man, working on our payroll.

Q. You advertise, I suppose, in trade journals?

A. Principally in trade journals, plus the production of catalogues and some booklets.

Q. And putting out such other information as you find desirable?

A. Principally describing the various uses of the products, trying to get the Engineering Department interested, of different plants. For example, we do not know what is going on in a large plant, but if we could get their scientific people interested in tantalum, they perhaps would keep that metal in mind for some of their more severe operations. It is mostly that sort of information, rather than sales.

Q. You are dependent, are you not, Mr. Aitchison, upon the materials which you receive from states other than 572 Illinois, for the successful manufacturing processes in your plant?

A. Well, some materials can be purchased almost anywhere, it seems, if the price is right. Other materials come from a particular place; tantalum ore for instance comes from one deposit in Australia.

Q. Without the materials which you find it necessary to procure in states other than Illinois, and in foreign countries, you could not conduct the operations of your business, could you?

A. Well. I do not know how far we could go, if we were forced to resort to it; but I think that I can buy spot tungsten in Chicago, or buy it in New York or elsewhere, imported from China or Australia. I think I could buy it in Illinois.

Q. Nevertheless there is no tungsten mined in Illinois, is there?

A. Not that I am aware of.

Q. And there is no molybdenum mined in Illinois, is there?

A. No.

Q. And there is no tantalum mined in Illinois, is there?

A. I wish there were.

Q. It is also true, is it not, Mr. Aitchison, that you send, as we have stipulated, I believe 70 per cent or approximately that amount of your materials, manufactured, to states other than Illinois, and in fact mostly all over the world?

A. As an approximation—

573 Q. Yes.

A. —that is what I would say. It might be 65 per cent, or it might be 75 per cent; but that is the best guess that I can give you. And I give it as a guess because we have no occasion in operating the business to summarize the figures by states or countries.

Q. I understand.

A. The money of a fellow in Indiana looks just as good to us as that of anybody else.

Q. (By Trial Examiner Dudley) Mr. Aitchison, you mentioned a while ago that there are 18 employees in the laboratory.

A. Yes, sir.

Q. Are they on an hourly basis, or a salary basis?

A. They are on a salary basis.

Q. You do not consider them as a part of your Production Department, then, do you?

A. Well, it depends on how you look at it.

Q. Well—

A. We cannot run without them.

Q. And you could not run without yourself, or without your managerial or office people either, could you?

A. Oh, they could get along without me pretty well, I guess.

Q. But in your own thinking, you do not consider them as a part of your production employees; you do not consider them as included there at all; is that correct?

574 A. That is a hard question to answer.

Q. Well, in your plant operations, do you consider them as more analogous to your engineers—

A. No.

Q. (Continuing) —who are also on a salary basis; are they not?

A. Except that the engineers have practically nothing to do with the production of the product; but if we want to produce wire to some very, very exacting specifications, which happens in many instances, we send a laboratory man right out of the laboratory, or send men right out of the laboratory, and have them draw it themselves.

Q. And your laboratory men sometimes act as salesmen in contacting prospective customers, do they?

A. Well, where the prospective buyer has questions to ask that the average sales engineer cannot answer, we would have to call in the technical people to discuss it.

Q. I see.

A. When we go into a plant like Du Pont, for example, we do not deal with the purchasing department; they usually cannot pronounce the names of the products that we sell; and five minutes after you get in there, he gives you a pass to Dr. So-and-so. That is a poor place to send in a fellow who has had no technical background.



575 Q. So your laboratory man would carry on that contact for you.

A. He supplies the technical information direct.

Q. I see. What is the total number of employees whom you have in the plant in North Chicago?

A. Of what date?

Q. As at the present time,—or any date for which you have the information.

A. I have it for February 17th.

Q. All right.

A. Fansteel, 311; and Vascoloy-Ramet, 69.

Q. Now, in those 311 and 69 employees, are there any included who are office help, or managerial employees?

A. Yes, sir; the 311 includes 38.

Q. 38 what?

A. Administrative and office, and salesmen; and the 69 includes 8.

Q. Are those 38 all on a salary basis?

A. Yes, sir.

Q. And the balance are production employees, upon an hourly basis?

A. No.

Q. How are the balance carried?

A. Well, there are 18 in the laboratory.

Q. (By Mr. Swiren) Mr. Aitchison, I think it would help in that connection if you would state how many  
576 of those 18 are supervisory men in the laboratory, and how many are just laboratory workers?

A. Well, there are two supervisory men. We have two divisions, one relating principally to tantalum, and the other one relating to all of the other general matters. Then there are 7 in the engineering department.

Q. (By Mr. Walsh) Seven?

A. Yes. Then you take the foremen, and add to them the plant superintendent, and the assistant plant superintendent.

Q. Those would not be included in the laboratory, would they?

A. Who?

Q. The foremen and the plant superintendent.

A. No, they would be in the additional 11 that I mentioned.

Mr. Walsh: I see.

Q. (By Trial Examiner Dudley) 11 foremen?

A. No, including the superintendent and his assistant.

152 *Witnesses for National Labor Relations Board.*

Q. (By Mr. Swiren) Are any of these hourly foremen of the type you told us about, where one man works with two other fellows?

A. I think not.

Q. You are talking here about real foremen?

A. We are talking about real foremen, salaried foremen.

Q. (By Mr. Walsh) Salaried foremen?

A. Yes.

577 Q. Now, let me see if I have this straight. I have  
38 administrative officers, sales forces, and office forces.

A. Yes, sir.

Q. 18 laboratory employees.

A. Including the two directing heads.

Q. Pardon me?

A. That includes the two directing heads.

Q. Including the two directing heads.

A. Yes.

Q. Does that 18 also include the 7 in the engineering department?

A. No, sir, that is separate.

Q. That is extra.

A. Yes, sir.

Q. Then there are 11 foremen, a superintendent, and an assistant superintendent.

A. Yes, sir.

Q. Now, are those all persons working on a monthly or weekly salary?

A. Let me see. I am not certain about the watchman.

Q. How many watchmen do you have?

A. That will come in the breakdown. We will give you the number of watchmen.

Q. That is your record as of February 17th, I believe you said.

578 A. Yes, sir. I am putting down two more divisions here. We have a fireman on a monthly basis,—one watchman and one fireman on a monthly basis; and the rest are on an hourly basis.

Mr. Walsh: That will help us out.

Q. (By Trial Examiner Dudley) Then are all the balance of the employees—

A. I think they are on an hourly basis.

Q. —on an hourly basis.

A. Yes.

Q. In what you call the Production Department of your plant.

A. Yes, sir.

Q. How would the 69 employees break down, of the other corporation?

A. There are 8 office and administration. But I—I do not have the exact figure, but I think there are either 4 or 5 on a monthly basis, who are foremen.

Q. (By Mr. Walsh) Foremen?

A. Yes, working foremen.

Q. (By Trial Examiner Dudley) And the balance?

A. Hourly.

Q. Hourly production employees?

A. All production, yes, sir. You see, I might explain that Vascoloy-Ramet leans very heavily on Fansteel for all laboratory work, inspection work, for the production of car-  
579 bides. Their gases are piped over from Fansteel, so that there is no need of duplicating an organization of that kind.

Mr. Walsh: No.

A. (Continuing) So the ones that I mentioned serve both companies.

Q. (By Mr. Walsh) Well, the Vascoloy plant is in one of the buildings within the Fansteel physical set-up, is it not?

A. Yes, sir—one of the 15 buildings that I referred to.

Q. Yes. And the work that is carried on by Vascoloy is not unlike in a general way the work that is carried on by Fansteel, is it?

A. Well, Fansteel produces the carbide powders, and the Vascoloy-Ramet Company takes the powders and prepares mixtures from them, and from the mixtures, they press them, not into large ingots, but into either small slabs, or individual dies or tool tips; and they sinter those tips; and then they sell those tips either as tips for others to attach to the tool, or they make a rough shank, and just attach them, braze them on, and let the other man, the customer, make the finished tool out of them; or they will take the tip, and attach it to the shank, and make the finished tool direct.

Q. I see. So the actual operations in Vascoloy-Ramet consist, then, of making up the powdered form into the shape in which they desire it to be, when it is finished?

580 A. They sinter it the same as Fansteel does, except, as I say, it is in smaller shapes.

Mr. Walsh: I see.

Q. (By Trial Examiner Dudley) Mr. Aitchison, over the period of, broadly speaking, last July until the present time, have there been any great variations in the number of employees, or has the number remained fairly constant?

A. No, sir; I believe that they have been increasing steadily.

Q. Increasing?

A. Yes, sir.

Q. Well now, let me see. Between the two corporations here, we have a total of 380 employees.

A. Yes, sir.

Q. Now, how many are there today?

A. I think it is 402, today.

Q. 402.

A. Yes.

Mr. Keele: It was 400 the other day.

Mr. Swiren: That, of course, excludes the jobs that were abolished, that were in existence at the time.

The Witness: Yes.

Q. (By Trial Examiner Dudley) How is that again?

A. There were 380, and there are 402 now; and I would guess that a year ago there were approximately 300.

581 Q. (By Mr. Walsh) In the two plants?

A. Yes.

Q. Your records of course would properly reflect that, would they not?

A. Certainly.

Q. (By Trial Examiner Dudley) Has the growth been steady?

A. You understand, that is an approximation.

Mr. Walsh: Yes.

Mr. Swiren: The Examiner asked a question.

Q. (By Trial Examiner Dudley) Has the growth been steady, or otherwise, Mr. Aitchison?

A. The per cent?

Mr. Swiren: The growth.

Q. (By Trial Examiner Dudley) The growth, from 300 to 400, within a period of one year?

A. Oh, I think it has been pretty steady since early in 1936.

Trial Examiner Dudley: Do you have any other questions along this line, Mr. Walsh?

Mr. Walsh: No, I believe that is all at this time.

The Witness: Is it permissible to volunteer the statement that the business first started in 1907?

Mr. Walsh: 1907?

The Witness: Yes.

582 Mr. Walsh: Well, you told us informally the other day of the changes that went on generally, and I do not believe it will be necessary to go over that again on the record.

Mr. Swiren: I have one or two questions.

Mr. Walsh: That is unless counsel wants to put it in.

*Cross-Examination.*

Q. (By Mr. Swiren) The Vascoloy-Ramet products are based primarily on patents originally procured by the Fansteel Company; is that correct?

A. Oh, yes; all worked out by Fansteel.

Q. And originally those products were manufactured by Fansteel, were they not?

A. Yes, sir.

Q. After you made an arrangement for some new patents, the Vascoloy-Ramet Corporation was organized, and took over the same organization, and carried on the manufacturing; is that correct?

A. Yes, sir.

Q. How long ago was that?

A. Well, it started in officially on October 1st, 1933, in actual production operations.

Q. And approximately two-thirds of the capital stock of that company is owned by Fansteel, is it not?

A. Not approximately two-thirds, but two-thirds is owned.

Q. Who is president of the Vascoloy-Ramet Corporation?

583 A. I am.

Q. Now, as I understand it, the direction and control of the Vascoloy-Ramet Corporation rests in the directors of Fansteel; is that correct?

A. Yes, sir.

Q. And you direct the operations of Vascoloy-Ramet out of your same office, from which you direct the operations of Fansteel; is that correct?

A. Yes, sir; and the purchasing is done by the same department.

Mr. Walsh: Just a moment. I object to this line of questioning, if the Examiner please, inasmuch as apparently it

is designed for the purpose of showing that the Vascoloy-Ramet Corporation, a Fansteel-controlled subsidiary, should be considered as part of the appropriate unit; and I know of nothing in the complaint that would cover that.

Mr. Swiren: We are trying to find out who the shop employees are.

Trial Examiner Dudley: The objection is overruled.

Q. (By Mr. Swiren) You say you have the same purchasing department.

A. Yes, sir.

Q. And do you cooperate in the making of single purchases for the requirements of both units?

A. Yes, sir.

584 Q. To whom is the shop superintendent of the Vascoloy-Ramet Corporation responsible, and from whom does he obtain his instructions?

A. From me.

Q. You mentioned a little while ago that some of the laboratory men are called in to analyze problems in connection with actual or prospective sales.

A. Yes.

Q. Do all of the laboratory men engage in that operation,—referring now to the Fansteel laboratory?

A. No.

Q. Well, about how many of the men do that work in the laboratory?

A. How many are called on to do that work?

Q. Yes.

A. Three.

Q. Who are those three?

A. Dr. Balke, Driggs, and Gwynn.

Q. The first two men whom you have named are the men who supervise, and are in charge of the laboratory, is that correct?

A. They are the directing heads of the laboratory.

Q. Turning our attention now to the Maintenance Department, as it existed on February 18th—

A. 18th?

585 Q. —or rather, on the 17th—nothing existed on the 18th.

Mr. Walsh: I move to strike that out.

Mr. Swiren: It may go out.

Q. (By Mr. Swiren) (Continuing) How was that made up? That is, what type of men did you have in that



department, from the point of view of work done and functions performed?

A. Carpenters.

Q. What else?

A. Electricians; millwrights; steamfitters; and helpers.

Q. If you did not have a Maintenance Department, could you run your shop?

A. Yes, sir.

Q. Has there been any change in your Maintenance Department since February 17th?

A. Yes, sir, we have discontinued practically all of it.

Q. How do you have the work done, when the occasion arises?

A. We contract for it on the outside.

Q. Is that type of service available on the outside?

A. Yes, sir.

Q. Directing your attention now to the Tool Room: was all of the work done in the Tool Room prior to February 17th, 1937, essential for the operation of the production unit of the company?

Mr. Walsh: That is objected to.

A. No.

586 Mr. Swiren: Just a moment, please, when counsel objects.

Trial Examiner Dudley: The objection is overruled.

A. No.

Q. (By Mr. Swiren) What type of work was not essential?

Mr. Walsh: That is objected to also, if the Examiner please.

Trial Examiner Dudley: Overruled.

A. Well, as an illustration in the hot swedging of tungsten, we use a series of steel dies, of different sizes. They have a very short life. We can have dies made on the outside by any good diemaker, in quantities; we can have it done on the outside cheaper than it was done in the old days by ourselves.

Q. (By Mr. Swiren) And are you having those dies made on the outside today?

A. Yes, sir.

Q. Have you cut down your force in the Tool Room, as the result?

A. Very much so.

Q. Other dies are being similarly made on the outside, are they?

A. Yes, sir.

Q. Do you buy any of your basic ores, such as molybdenum, tantalum of tungsten, from brokers, or through intermediaries, other than the mines?

A. Just recently we bought some Australian ore through a broker, but usually we buy it direct from the mines.

587 Q. Are there ore brokers that sell products of that character?

A. Yes, sir.

Q. If an ore broker, or ore brokers, were to sell such products from offices or warehouses within the State of Illinois, would it make it possible for you to run your operations by purchasing from them.

A. Yes, sir.

Q. Most of the ore—

Mr. Walsh: Pardon me, just a moment. Will you read that question, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Most of the ore that you have purchased in recent years for tantalum work, was mined in the Tantalite, Limited, mines of Australia; is that correct?

A. Yes, sir.

Q. And in more recent years you have been purchasing that ore from the Lady Deborah Moulden?

A. Yes, sir.

Q. You have not purchased it from the Tantalite Company, Limited?

A. No, sir, the contracts have been made with Lady Moulden direct.

Q. And if Lady Moulden were to make the contracts with you through an office in Chicago, and make delivery to  
588 you from Chicago warehouses, would that prevent your operating in normal fashion?

A. Not at all.

Q. Do you buy any of your vital chemicals within the State of Illinois?

A. Yes, sir.

Q. Are there chemical factories located within the State of Illinois?

A. Yes, sir.

Q. Now, you testified a few moments ago that in connec-

tion with delicate and unusual work, the laboratory men come into the factory, and do the work themselves; is that correct?

A. Yes, sir.

Q. Is that a common occurrence?

A. Yes, sir.

Q. With respect to general operations, do the laboratory men do the inspection work?

A. Yes.

Q. Do they test materials during the course of the various processes?

A. Yes, sir, they do, at various stages of the processes.

Q. It is necessary in that connection for them to participate in actual production work in the plant?

A. Many times it is.

Mr. Swiren: That is all.

589 Mr. Walsh: I have one or two further questions.

*Redirect Examination.*

Q. (By Mr. Walsh) Mr. Aitchison, if you discovered a tantalum deposit in the backyard of the Fansteel plant, it would help you in your operations, would it not?

A. We did discover one.

Q. You did?

A. Yes.

Q. Was it a substantial one?

A. Very much so.

Q. Are you now using it?

A. Yes, sir.

Q. To the exclusion of the ore formerly received from Australia?

A. In some products, yes, sir.

Q. I see. How did you happen to discover that?

A. Well, we piled up worthless furnace salt for a period of twenty years, at the back of the lot; but recently we have developed a process by which we can rehandle it, and extract the remaining tantalum from it.

Q. You can get some of the remaining tantalum from it, can you?

A. Not some; all.

Q. Well, I mean, all that is left in the pile.

A. Yes, sir.

590 Q. I suppose that was the spoil pile from the furnaces; is that correct?

A. No, sir, that was the residues from natural production, from the electrolysis operation.

Q. That deposit, however, was not there as the result of—

A. A geological upheaval?

Q. Yes.

A. No.

Q. But nevertheless, you are using it now, you state.

A. Yes, sir.

Q. I see.

A. And in a very substantial manner.

Mr. Walsh: That is all.

Trial Examiner Dudley: Are there any further questions of Mr. Aitchison? I have some further questions, but I am perfectly willing to suspend at this time until after lunch.

(Thereupon, at 12:20 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

*After Recess.*

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: Will you resume, please, Mr. Aitchison.

ROBERT J. AITCHISON, the witness on the stand at the time of recess resumed the stand and testified further as follows:

591 Trial Examiner Dudley: Mr. Aitchison, I would like to ask you a few further questions, following out your earlier testimony of this morning.

The Witness: Yes, sir.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) The pleadings indicate that there allegedly was a strike at the plant of the respondent beginning on or about February 17th, 1937. I do not wish to go into the strike in its general aspects at this time, but I would simply like to ask you if there was a complete shut-down of your plant at that time?

A. Yes, sir.

Q. You ceased all operations, did you?

A. In the parent company, and all subsidiaries, yes, sir.

Q. And how long was that complete shutdown in effect?

A. From the afternoon of February 17th, until about—well, we started to open on Saturday, February 27th, and we opened in a very gradual manner, and did not get back into production until the 20th of March.

592 Q. The 20th of March.

A. Yes.

Q. (By Mr. Swiren) Full production?

A. Full production.

Q. (By Trial Examiner Dudley) That is, you were completely closed from February 17th to February 27th?

A. They were evicted on the 26th, but the gas was so bad that we could not get into the place. We got some heading machines operating on the 27th, and then on Monday—you see, that was Saturday, the 27th; and then on Monday we had a few more people in there; and then we started installing glass to replace the many broken windows on the outside; and by the time we got it cleaned up, and called them back one after another, it was March the 20th before we felt we were really running.

Q. All right. Now, during this period, then, of your complete shut-down from February 17th to February 27th, and of your partial shut-down, if we may call it that, from February 27th until March 20th, there was likewise a similar stoppage of your shipping into the plant, and your shipping away from the plant, of articles that you would ordinarily ship by means of interstate commerce, was there?

A. Yes, except for the stuff that had been ordered, and that was stopped, and on which we were accruing demurrage, because there could not be any delivery. There were some cars of stuff that were held in the yards, and there was  
593 some in the express office, and other places. They backed up the packages, because we could not take them in. Then, of course, as soon as we had a chance to take them in, they delivered them; but, of course, we did not release anything to come into the plant until it could come in.

Q. I see. Generally speaking, if your plant was closed by reason of a labor controversy, or any other reason, would your shipping of goods in interstate commerce likewise cease?

A. It would except for the things that were completed, and lying in the finished stock storeroom.

Q. I see.

A. (Continuing) Which we could use to fill orders, as long as we had possession of the plant and were free to ship.

We did have some completed things in stock, you see, which, as soon as we opened up, we tried to sort out, and ship what we could.

Q. In other words, there is no point or purpose to your engaging in interstate commerce, unless you are able to operate your plant?

A. That is right.

Q. That is true, is it not?

A. That is correct.

Mr. Swiren: I would like to complete the picture.

Q. (By Mr. Swiren) From the 17th of February until the 26th of February, were you in possession of your entire plant?

594 A. No, sir.

Q. The fact is, is it not, that—

A. Not a single department of the place attempted to operate.

Q. Well, could you operate, not having possession of buildings 3 and 5?

A. No, sir; we could not.

Q. And those buildings were out of the possession of the company during that entire period, were they not?

A. They were.

Q. Did the company try to get possession of those buildings during that period?

A. We sought the aid of the properly constituted county authorities, to get them for us.

Q. And those authorities tried to help you get possession of your property, did they?

A. They tried to.

Q. But they were prevented from so doing by the men inside of buildings 3 and 5, until the 26th of February; is that correct?

A. They were.

Trial Examiner Walsh: You will bring that out later, I take it.

Mr. Swiren: I want to complete the picture, because it is my position that the interruption of operations was not due to the strike; the strike did not interrupt operations at all; but it was due to the seizure of the buildings.

595 The Witness: We cannot run without the proper atmosphere.

Trial Examiner Dudley: Without what?

Mr. Swiren: Just answer the questions, Mr. Aitchison.



Q. (By Mr. Swiren) Was there damage done to the property, equipment, and supplies of the company during the time the discharged employees were occupying buildings 3 and 5?

A. There was.

Q. And that took considerable time to repair, did it not?

A. Yes, sir.

Trial Examiner Dudley: Would you rather not bring that out when you go into the entire matter, Mr. Swiren?

Mr. Swiren: I am just showing why it was we did not get into complete operation.

Q. (By Mr. Swiren) Were there men on strike after you had reached full production, with picketing going on?

A. How was that again?

Trial Examiner Dudley: Read that question, please.

(The question was read.)

A. Picketing was going on. I do not know about the strike. It had nothing to do with our plant.

Q. (By Mr. Swiren) Did it interfere with your operations, the picketing, or other signs of a possible strike?

A. To some degree.

Q. Did it prevent you from shipping goods in interstate commerce

596 A. No, sir.

Q. Did it prevent you from receiving goods in interstate commerce?

A. No, sir.

Mr. Swiren: That is all.

Trial Examiner Dudley: What is the "it" to which you are referring, Mr. Swiren?

Mr. Swiren: Here is what I am getting at, if the examiner please—

Trial Examiner Dudley: I think I must have missed one of your questions.

Mr. Swiren: I am getting at the point that the alleged strike did not interfere with our operations, or our shipments in or out of the plant; but that what interfered with them was the fact that some men came in and took our plant away from us.

Trial Examiner Dudley: The closing of the plant, due to a labor controversy, did not stop interstate commerce?

Mr. Swiren: I do not care what the reason was—

Trial Examiner Dudley: That is correct, is it?

Mr. Swiren: I say, I do not care what the reason was that

motivated the men who unlawfully seized our plant. It was not the men quitting work that stopped us, but it was the men seizing the plant that stopped us. We could replace the men right away. That was not the problem.

Q. (By Trial Examiner Dudley) Yes, but is this correct, Mr. Aitchison, that as soon as the work at the plant stops, then your interstate commerce stops?

A. Well, it stopped because the key buildings in the plant were stopped.

Q. Yes.

A. We cannot operate without putting the material through its proper departments.

Q. All right. Now, I would like to have you develop, if you will, Mr. Aitchison, the background—by which I mean the historical background—of the relations between the company and its employees up to the time that we begin to get into the controversy; and then after that we will let the attorneys develop it as they may wish to do so later on.

How long have you been with this company?

A. Directly and indirectly?

Q. Yes.

A. Well, I first started in with the company as an auditor and a certified public accountant.

Q. When?

A. (Continuing) To review their records.

Q. When?

A. Commencing in December of 1915. I reviewed their records, or my office reviewed their records, for every year from December 1915 until February 1932.

Q. And then did you—

598 A. (Continuing) I was a young accountant when I started, and my specialty was plant organization and plant engineering; and I developed their cost system from time to time, and took care of their plant problems.

Q. When was it you became—vice president, was it?

A. I became vice president on February 17, 1932, at 2:30 o'clock in the afternoon.

Q. And when did you become president?

A. I think that was in May 1936. It might have been the end of April, but it was not later than the 1st of May 1936.

Q. What other managerial positions, if any, have you occupied with the company?

A. Previous to 1932?

Q. Yes.

A. I served in a professional consulting capacity, but not directly in the employ of the company.

Q. Over the period of time, as far as you know, covering the period up to September 1, 1936, were there any organizations of employees?

A. Well, based on some tax examinations that I made for the company, which took me back to its original inception in 1907, and gave me a very close insight into its entire operations, there never was any problem with the employees of the company, up to this last period.

Q. Was there any organization of employees?

599 A. No, sir, there was no organization of employees in its entire history.

Q. Had it ever had Shop Committees?

A. No, sir, it had not.

Q. Did it ever have a system of making complaints to the management, by means of Representation Boards, or any such similar procedure?

A. They had no official set-up of committees, or representatives, because ours is only a small business, and as long as I have been connected with it, since February 1917, I do not think there has been a day that I have been at the plant, but what I have spent at least a half an hour around the grounds, or in more than one part of the plant, and it has always been easy for anybody to talk to anyone, behind the machines, or in the yard, or in the office.

Q. Did the employees have Recreational Committees, or Clubroom Committees, or any such informal organizations?

Mr. Swiren: You testified "February 17th." That was 1932, I take it?

A. What are you talking about?

Q. The date you became an officer.

A. Yes. The Fansteel Social Club was formed in—I think it was 1935.

Q. (By Trial Examiner Dudley) What did that club do?

A. It promoted picnics, pingpong tournaments, card 600 parties, dances, and social activities among the workers.

Q. Is that still in existence?

A. I think so, although we have not heard from them in the last couple of months.

Q. Was it operating, or active, all during the summer of 1936?

A. Yes, sir. It handled all of the details of sponsorship

of the picnic that was held in August of 1936; the giving of prizes; the holding of card parties.

Q. At those social events did the employees invite the managerial and supervisory officials of the company?

A. Yes, sir.

Q. Did they attend?

A. Pardon me?

Q. Did they attend?

A. I attended several, and I know that other officers did. There was one or more officers represented at every one, with their wives.

Q. During this period up to September 1, 1936, were there complaints ever made by more than one person at one time regarding wages, or working conditions, or hours, or similar matters?

A. Not to my knowledge were any of those ever presented, no, sir.

Q. There were complaints, were there, by individuals?

601 A. Not to me.

Q. No complaints at all—

A. Not to me.

Q. (Continuing) —by any employees, during all of that period of time?

A. Not to me. They may have asked the foreman for a raise, or something like that, but nothing ever came to me.

Q. Not as far as you know.

A. No; and I will go beyond that, and say that recommended wage increase ever landed on my desk, that I refused.

Mr. Block: Judge Forby is here now.

Trial Examiner Dudley: We will suspend for a few moments.

(Thereupon, a recess was taken, after which the hearing was resumed in the courtroom of the Circuit Court of Lake County.)

Q. (By Trial Examiner Dudley) Mr. Aitchison, during the period up to September 1, 1935, were there ever any attempts made, to your knowledge, by any organization, or any person, to organize the employees of the Fansteel Metallurgical Corporation into a union?

A. No, sir.

Q. Did the American Federation of Labor ever make any attempts to get any of your employees to join any of its unions?

A. Do you mean, 1935, or 1936?

Q. I mean, before September 1, 1936.

602 A. No, sir.

Q. As far as you know, do any of the carpenters, or plumbers, or machinists, or any of the craftsmen employed at your plant, belong to any American Federation of Labor union?

A. Yes, sir, I know that some of them do.

Q. Do you know when they joined that union,—or those unions?

A. I do not know, but I was told that one of the carpenters had belonged to it for more than 10 years; and one of the men in the machine room belonged to the Musicians' Union for a number of years; but nothing connected with our plant, however.

Q. About how many of your employees have belonged or do belong to American Federation of Labor unions?

A. I would have to guess at that, but I would say, about a half a dozen.

Q. About half a dozen?

A. Yes, sir.

Q. Has the American Federation of Labor ever attempted to organize the employees of your plant into a union?

A. Not to my knowledge.

Q. Have the employees themselves—or had they prior to that time ever attempted to start any kind of a union?

A. Not to my knowledge—that is—

Q. What is the approximate date on which you first heard there was any attempt being made to organize the employees of your corporation, either before or after September 1, 1936?

603 A. About June or July 1936.

Q. About June or July of 1936 you heard that there was a movement on foot to organize the employees of your corporation?

A. Yes, sir.

Q. From whom did you get that information?

A. Well, it filtered in through some of the foremen, or some employee.

Q. Did they have definite information, or did they just have rumors?

A. No, it was rumors entirely.

Q. What did they say?

A. That they understood—they said that they understood that a few in the plant who had some knowledge of union ac-

tivities, were contemplating trying to organize one in our place.

Q. Did they say anything about people outside of the plant—

A. Not at that time.

Q. (Continuing) —approaching employees regarding union membership?

A. Not at that time.

Q. Not at that time.

A. No, sir.

Trial Examiner Dudley: I think those are all of the questions I have to ask Mr. Aitchison at this time.

Mr. Walsh: I have nothing further.

Trial Examiner Dudley: Mr. Swiren, have you any 604 further questions to ask at this time?

Mr. Swiren: No.

Trial Examiner Dudley: Well, Mr. Aitchison, you are excused for the time being. As you know, there are a number of questions in the pleadings which will undoubtedly come up later on, about which we will probably want a good deal of testimony from you; but we will wait until we can approach those matters in a somewhat orderly manner.

The Witness: All right.

(Witness excused, temporarily.)

Mr. Walsh: Mr. Kondrath.

Will the examiner swear this witness, please?

JOHN A. KONDRATH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Walsh: If the examiner please, I would like to ask you to explain to this witness—

Mr. Swiren: We cannot hear counsel.

Mr. Walsh: I beg your pardon. I would like to ask you, if the examiner please, to explain to this witness the question of privilege under the subpoena. Mr. Kondrath is here in response to a subpoena served upon him, and there is no one here to advise him as to his rights in giving testimony before this Board, so I would, therefore, like to have the examiner ask him whether or not he desires to claim privilege.

605 Trial Examiner Dudley: Do you mean, Mr. Walsh, the privilege that is mentioned in the Act, against self-incrimination?



Mr. Walsh: Right.

Trial Examiner Dudley: All right, sir. Section 11, paragraph 3, of the National Labor Relations Act, under which we are holding this hearing, states:

"No person shall be excused from attending and testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him, or subject him to penalty or forfeiture."

The Act then goes ahead to state:

"No individual shall be prosecuted, or subjected to any penalty or forfeiture, for, or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify, or to produce evidence; except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Now, that means, inasmuch as you are brought here on a subpoena, as Mr. Walsh just tells me, that you are bound, pursuant to your oath, to answer the questions which are asked of you by counsel, or by myself, and to answer them fully and truthfully. If you do not answer them truthfully, you are making yourself liable for perjury, as mentioned in the Act. If questions asked you call for you to give material or information which in any way might subject you to any penalty or forfeiture, you then would have, in most proceedings, the privilege given to you by law of refusing to answer. That is, normally a witness is not required to give in a proceeding testimony or evidence which later could be used against him, and subject him to fine, forfeiture, or penalty.

The Act here provides, however, that if you claim this privilege, then you still must go ahead and testify, but that you will, nevertheless, by reason of your being compelled to testify, not be, as I said before, prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which you are compelled to testify.

Is that clear, or is that too legalistic for your understanding?

The Witness: That is too legalistic, I am afraid.

Trial Examiner Dudley: In other words, it means that if the attorneys here ask you questions which call for information which might be used to convict you in some other pro-

ceeding of some crime, or some misdeed, you, nevertheless, if you claim privilege here, after claiming that privilege, must still testify, but then you will be excused from the misdeed, or crime, or whatever it was that you committed.

Mr. Walsh: Does the witness claim his privilege?

607 The Witness: Yes, sir.

Trial Examiner Dudley: All right. The witness claims his privilege, but the examiner will still ask him to answer all questions giving information subject to the provisions of the Act, and also subject to the benefits of the Act.

Mr. Swiren: Do we understand that the witness is claiming his privilege?

Trial Examiner Dudley: He answered "yes" to Mr. Walsh's question.

Mr. Swiren: He has not been asked the question yet, has he?

Mr. Walsh: Yes, and he says he is claiming the privilege.

Mr. Swiren: But that privilege does not apply to all testimony, on any subject. The claim of privilege cannot be made in bulk as to all testimony.

Trial Examiner Dudley: Oh, you can make a claim of privilege, but how far the effect of that claim goes may be a different matter.

Mr. Swiren: Well, it is the first time I ever heard of a witness being allowed to claim privilege, before he was even asked a question.

Mr. Walsh: This is the first time he has been examined before this Board.

Mr. Swiren (continuing): To know whether or not the question involves any self-incrimination or otherwise.

608 Mr. Walsh: I assume that the record shows that the witness has claimed his privilege, Mr. Examiner, please?

Trial Examiner Dudley: It does, does it not, Mr. Reporter?

The Reporter: It does, Your Honor.

Mr. Block: We do not hear.

Mr. Walsh: The examiner asked the reporter if the record shows that the witness has claimed his privilege, and the reporter stated that it does.

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Kondrath, you are at this time in jail, are you not?

A. Yes, sir.

Q. You came over here in response to a subpoena?

A. Yes, sir.

Q. But you came voluntarily; is that right?

A. Yes, sir.

Q. All right. Now, will you state your full name?

A. John A. Kondrath.

Q. What is your address?

A. What?

Q. Your address

A. 231 South West Street.

Q. Waukegan?

A. Waukegan, Illinois.

Q. I believe you are a machinist?

609 A. Yes, sir.

Q. You were employed by the Fansteel Metallurgical Corporation?

A. Yes, sir.

Q. You worked there for about 12 years; is that right?

A. About.

Q. All right. I will ask you if you are now president of Lodge No. 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America.

A. I am.

Q. Will you tell the examiner in your own words just how this Lodge got started; tell us about how it grew up, and about the meetings that were held, and the officers who were elected?

A. Around about June 1936 there were efficiency experts brought into the plant, and everybody started talking about, that they are cutting this wage, and that wage, and that the efficiency men would go through all of the plant, and that they would cut wages here and there, in this department and that department—

Mr. Block: Now, let me interrupt a moment, if the examiner please. We would like to object to the answer of the witness, as thus far given, as not being responsive, and also containing matter which would normally be regarded as hearsay, and in the form of conclusions.

The question called for how the organization started,  
610 and apparently called for its history and development;

and the witness is now relating, or attempting to relate, conversation or rumors in and about the plant, relating to unidentified persons whom he calls "efficiency experts."

Mr. Walsh: I presume, of course, counsel is familiar with the provision of this Act which relaxes the rules of evidence, and I am quite sure that the examiner is familiar with it. I think the objection should be overruled.

Mr. Block: What was counsel's statement? I did not hear.

Mr. Walsh: I say, I assume counsel is familiar with the provision of the Act relating to the relaxing of the rules of evidence which control testimony in courts of law and equity, but which are not controlling in these proceedings.

Mr. Swiren: Well, they can still be applied by the examiner, and there ought to be some limitation upon the extent to which unidentified persons can be allowed to speak third or fourth hand through a witness.

Mr. Walsh: As a matter of fact, that is not inadmissible, even in courts of law, Mr. Swiren.

Mr. Block: Oh, we do not agree with counsel.

Mr. Swiren: That is a new rule.

Trial Examiner Dudley: Let the examiner rule.

Mr. Block: Yes.

Trial Examiner Dudley: We are not, as Mr. Walsh says, bound by the normal rules of equity and law that bind or 611 control normal court procedure. We do, however, want to eliminate as far as possible irrelevant matter, and as much as possible we want to eliminate what is known as hearsay. At times, however, it may be wise to admit evidence which might normally be called hearsay, in case that should be about the best evidence or provide the quickest way of getting into a matter.

However, that does not mean that the Board would give that kind of evidence as much consideration as it would give evidence upon a sounder basis.

In this particular case Mr. Block is objecting particularly to the reference to the so-called efficiency men. I suspect, the acts of the efficiency men, and perhaps to the statements of the efficiency men; but it seems to me that the statement of the witness down to this point might well indicate the going through the plant of men known as efficiency men, which would be a fact, and which would also reveal the reasons in the mind of the witness, and perhaps of his associates, in connection with forming a union about that time.

I, therefore, will admit the testimony, but ask that the witness be as definite as he can in naming people, and in giving dates, in specific information rather than generalities.

You may proceed.

Q. (By Mr. Walsh) I think you were talking about some time in June or July, Mr. Kondrath?

A. Well, the last part of June, these efficiency men 612 naturally were in the production department, the cutting, polishing, grinding, and set-up, among the women—

Mr. Swiren: Will you speak up a little bit louder, please?

A. (Continuing) To the best of my knowledge, the Cutting Department had some dispute over the matter first, that they was to be cut so much, and they had to produce so much more points for so much less money. I think—I am not sure—that those fellows were probably on piecework making around \$6.50 to \$7, and then they were trying by some method to get down to \$4, and increase the production some hundred or so; but, anyway, more than what they were getting, for what they were producing; more than they were producing. Well, then, the cutters, they all knew me in the plant, that I belonged to the Musicians' Union; so they got to talking with me, and wanted to know how they could organize; and at about that time John L. Lewis was heard all over the United States, on the radio, that he is coming out with industrial organization; so the Cutting Department decided that they would join a union, and start an organization; and they talked it over with the Polishing and Grinding Departments; and they went around the whole plant, maintenance, machinists, and so forth.

So after the Fourth of July, we started to organize. Well, about July 7th or 8th, in the following week—not in the week of July 4th, but the following week, in the first part of the week, I was called into the office. I was called into Mr. 613 Radke's office.

Q. (By Mr. Walsh) Radke?

A. Yes, sir; treasurer of the company.

Q. (By Trial Examiner Dudley) How does he spell his name?

Mr. Walsh: R-a-d-k-e, I believe, is it not?

Mr. Swiren: That is correct.

A. (Continuing) At that time I had borrowed some money from the company, for a little bill to pay; and Mr. Radke says, "Well, I suppose you think I have called you here about that"—or something like that. "But," he says, "I want to talk something different with you." I says, "All right." He says, "There are some rumors that you are organizing the plant." "Well," he says, "you know in the American Federation of Labor Unions there is so much craft,

you will have a local for machinists, a Local for this, a Local for that, and so forth." So I says to Mr. Radke—I says, "Mr. Radke, I don't believe we want that kind of a union." I says, "Everybody hears John L. Lewis on the radio, and I believe that is the kind of union we would like to have in this company, if any; industrial organization, that is, so everybody can belong to the organization."

As a matter of fact, I knew about the craft unions a little, about the American Federation of Labor, as I was a member of it years ago in Chicago; and also being a member of the Musicians' Union.

Well, Mr. Radke says, "Now," he says, "don't take it 614 hard that we loaned you this money"—or something like that—"or that we have that against you." Well, I thanked him for that, and I says, "Well, I don't know anything right now to talk with you about the organization; I don't know whether it is going to be organized or not."

So then Mr. Radke says, "Well, if it won't be, or if it will be," he says, "I haven't got nothing to say about it."

So I went back to the plant, and then, naturally, all of the fellows, they thought that I was going to be fired, or something. In fact, before I left—

Mr. Block: That is objected to. I think at least that ought not to be included in the testimony—as to what somebody else thought. It is not based on anything that was said.

Mr. Walsh: I think it is quite competent, Your Honor.

Mr. Block: He says, "Naturally, they thought something had happened." But I do not think the rule ought to be extended to unreasonable limits here.

Trial Examiner Dudley: What the other employees might think, in interpreting such a situation, is a part of the picture in giving us the atmosphere that pervaded or did not pervade the plant, and, therefore, it is admissible.

Mr. Block: Do you mean, irrespective of how he learned that? That is, do you mean that a statement as to what somebody else thinks, should be heard by any court, and that a man should be allowed to reproduce, or to say that somebody else thought something,—not from anything that they said or did? As his statement now stands, it is "nat- 615 urally, they thought," and it does not show how he came to that conclusion.

Q. (By Trial Examiner Dudley) Mr. Kondrath, did you know how your fellow employees thought, or what they thought, by reason of what they told you?



A. Yes, sir.

Trial Examiner Dudley: Well then, it is admissible.

A. (Continuing) Before I was called to the office, if I remember right, Mr. Joseph Petraitis, and probably a couple of others, said—especially Joe Petraitis made the remark—“Now, I suppose they will get you up there, and probably hand you a few dollars or something, and you will sell us out, and you will tell them who all wants to organize.” And I replied, “Don’t be afraid of that.” So when I got back—may I go on?

Q. (By Mr. Walsh) You may go ahead, Mr. Kondrath.

A. When I came back, they were all on edge waiting for the news whether I was fired or not; so I says, “I am not fired, boys.” I says, “I am still working, and we are going to go ahead with the organization.”

Well, it went on for about a week or a week and a half, and then we arranged for a meeting, about July 20th or 21st, or somewhere in that neighborhood.

Q. About July 21st—

A. Yes.

616 Q. —you arranged a meeting, is that right?

A. Yes, sir, and we set up temporary officers.

Q. Where was that meeting held?

A. That meeting was held at Slovenik Hall, Room No. 1, I believe.

Q. Was that the first meeting that you had?

A. That was the first meeting.

Q. The first regular meeting.

A. Yes, sir.

Q. Now, I will ask you whether at that time you set up any committees, and if you appointed acting officers, and things of that kind.

A. We elected temporary officers.

Q. Who were they, do you remember?

A. I was elected first, president. Whitey,—or Clarence Dreyer—we generally call him Whitey—was vice president. Edward Ruck was corresponding secretary. Carl Swanson was secretary and treasurer. Committees were appointed, so that there was one at least in each department.

Q. Do you recall who were elected trustees?

A. Trustees, I think, was DuBois.

Q. Was there more than one trustee?

A. There was, but I don’t just remember.

Q. I will ask you whether you recall if Frank Zelenick

and Al Bunton were elected trustees at that time, at that particular meeting?

A. (No answer.)

Q. Well, it does not make a great deal of difference. We will go on to something else.

A. Well, I don't know if all of the officers were elected at that particular meeting.

Q. Can you tell me, do you remember who was on the Grievance Committee?

A. On the Grievance Committee?

Q. Yes.

A. There was myself, Carl Swanson, Charles Warner, and Al Bunton.

Q. (By Trial Examiner Dudley) Who is the last man?

A. Al Bunton.

Mr. Walsh: Bunton.

Q. (By Trial Examiner Dudley) How do you spell it?

A. I don't know.

Trial Examiner Dudley: Mr. Walsh.

Mr. Walsh: I think it is B-u-n-t-o-n. To save time, I will read the persons whom I have found to be the first Grievance Committee—just to save a little time.

Mr. Swiren: Of course we do not know anything about this. If the union would bring in the records as we suggested in our application for subpoenas, we could tell what counsel is referring to; but we cannot agree as to who anybody 618 was.

Mr. Walsh: No.

Q. (By Mr. Walsh) I will read this list of names, and ask you whether these were not the people who were on the first acting Grievance Committee.

John Kondrath.

A. Yes.

Q. Clarence Dreyer.

A. Yes.

Q. Ed Ruck.

A. Yes.

Q. Carl Swanson, Charles Warner—

Mr. Block: Let him answer as to each one.

Mr. Walsh: If you want each one, counsel, I will give it to you any way you want.

Mr. Block: And not quite so fast, please.

Mr. Walsh: All right.

Mr. Block: Because we cannot keep up.

Mr. Swiren: Or let counsel take the stand.

Mr. Walsh: That would be real nice.

Q. (By Mr. Walsh) I will ask you, Mr. Kondrath, whether or not the following persons were elected to the acting Grievance Committee on July 21st.

John Kondrath.

A. Yes, sir.

619 Clarence Dreyer.

A. Yes, sir.

Q. Ed Ruck.

A. Yes, sir.

Q. Carl Swanson.

A. Yes, sir.

Q. Charles Warner.

A. Yes, sir.

Q. Frank Latz.

A. Yes, sir.

Q. Steve Ark.

A. Yes.

Q. Angelo Galbavy.

A. Yes.

Q. Roy Brown.

A. Yes.

Q. Stanley Grum.

A. Yes, sir.

Q. H. Bond.

A. Yes, sir.

Q. Were those officers later made permanent?

A. They were.

Q. And do you recall when that was done?

A. It was at the following meeting that we held, up at the Waukegan Hotel, to my knowledge.

620 Q. Now, that meeting was held on what date, do you remember?

A. That was in August, I believe.

Q. Do you recall what day in August?

A. Well, it was toward the end of the week.

Q. It was August 5th, as a matter of fact, was it not?

A. It was Friday, or something like that

Q. All right. Now, tell me about that meeting; what happened at that meeting?

A. At that meeting we had all of the officers take the oath.

Q. Take their oath of office?

A. Yes, sir.

Q. Yes?

A. And we had Van A. Bittner from Chicago; he came out and gave a talk. Then there was also Serain Loewe.

Trial Examiner Dudley: Who?

Mr. Block: Speak a little louder.

A. Serain Loewe.

Q. (By Mr. Walsh) Serain Loewe?

A. Yes, sir, and some other fellows from the different locals were invited for the ceremony; and our members.

Q. And the officers were installed?

A. Yes.

Q. Did anything else take place at that meeting?

A. Well—

Q. Were you taken into the union at that time?

621 A. Yes, sir.

Q. That is commonly known as receiving the union obligation; is that correct?

A. Yes, sir.

Q. All right. Now, on August the 14th did you hold a meeting at Slovenik Hall?

A. Yes.

Q. That was the next meeting after the Waukegan Hotel meeting, was it?

A. Yes, sir.

Q. Will you tell us what happened at that meeting?

Mr. Swiren: What date was that?

Mr. Walsh: August 14th.

A. That was the August 14th meeting, the next meeting. Well now—

Q. (By Mr. Walsh) I will ask you whether additional officers were elected at that time.

A. Yes, sir, there were additional officers elected at that meeting.

Q. Do you recall what officers they were?

A. (No answer.)

Q. I will ask you whether or not there was an inside guard elected that night?

A. Yes, sir, there was an inside guard, and I believe an outside guard.

622 Q. And who was elected inside guard; Fred Hensley?

A. Fred Hensley; and Paul Van Troeck, as outside guard.

Q. And John Germer was elected treasurer?

A. Yes, sir.

Q. Financial secretary was Carl Swanson; is that right?

A. Yes, sir.

Q. I will ask you if that night you received your charter from the Amalgamated Association of Iron, Steel and Tin Workers?

A. Yes, sir.

Q. All right. Now, Mr. Kondrath, what is the purpose of Lodge 66?

A. The purpose of Lodge 66 was—and is—for collective bargaining, to better the conditions of our members in the factory.

Q. It is not organized for any other reason, or for any other purpose?

A. No, sir.

Q. It has no other purpose but that; is that right?

A. Not that I know of.

Q. All right. Now, who, what persons, what people are eligible to belong to Lodge 66?

A. To Lodge 66, maintenance, shipping clerk, cutters—that is productive workers.

Q. Production workers?

623 A. Production workers; machinists, and other laborers.

Q. And those persons working only for the Fansteel Company; is that right?

A. Yes, sir.

Q. Do you admit to membership any persons working for any other companies?

A. No, sir.

Q. Do you admit to membership any persons working at the Vascoloy-Ramet Company?

A. No, sir.

Q. Although that company's plant is in the same yard as Fansteel,—is it not?

A. It is outside the fence.

Q. Oh, it is outside the fence?

A. Yes, sir.

Q. You do not—or, do you admit the clerical workers of the company, the office help?

A. No.

Q. And of course the foremen and laboratory workers are not admitted to membership.

A. No, sir.

Q. Now, when did you first join the union, Mr. Kondrath?

A. I joined the union in July.

180 *Witnesses for National Labor Relations Board.*

Q. 1936; is that right?

A. Yes, sir.

624 Q. All of the members of your union worked for the Fansteel Company on an hourly pay basis; is that right?

A. Yes, sir.

Mr. Walsh: You may inquire. Any one of the three counsel may inquire.

Mr. Swiren: Pardon me?

Mr. Walsh: I say any one of the three counsel may inquire.

Mr. Swiren: You are very courteous.

Mr. Keele: His testimony was that all of the members worked on an hourly basis?

Mr. Walsh: Pardon me?

Mr. Keele: His testimony was that all of the members worked on an hourly basis?

Mr. Walsh: Yes.

Mr. Keele: May we have just a moment, your Honor?

Trial Examiner Dudley: Yes.

(A short intermission followed.)

Mr. Keele: No cross-examination.

Trial Examiner Dudley: No cross?

Mr. Keele: No cross.

Trial Examiner Dudley: Mr. Kondrath, I want to ask you a few questions on some points that I am not very clear about.

The Witness: Yes, sir.

*Examination by Trial Examiner Dudley.*

625 Q. (By Trial Examiner Dudley) First with regard to the meeting on August 14th, 1936, at which you testified there was an election of an inside and outside guard, a treasurer, a financial secretary, and so forth.

A. Yes, sir.

Q. You stated that you were received at that time into the union.

A. Yes.

Q. And assumed the union obligation.

A. Yes, sir.

Q. Do you mean that at that time your own group became a union, formally and finally, a permanent union instead of a temporary union; or do you mean that at that time you received a charter from some larger organization, such as the American Federation of Labor, or the C. I. O., which you mentioned?



A. It really was both.

Q. Did you on August the 14th get a charter, or did you apply for a charter?

A. It was along about that time, at one of those meetings, that the charter was presented, but I can't just recall which meeting it was at.

Q. Do you have a charter now?

A. Yes, sir.

Q. From whom?

A. The Amalgamated Association of Iron, Steel and 626 Tin Workers of America.

Q. I see. You are not sure as to exactly when it was that you got your charter, though?

A. I am not real sure when it was we got the charter, no, sir.

Q. Do you know the date of that charter?

A. I don't believe I do know the date, no.

Q. You testified, I believe, that you do not admit to membership in your union, laboratory workers, or members of the Laboratory Department of the factory; is that correct?

A. That is, laboratory workers that are—that have something to do with chemicals; that is, like a doctor of chemistry, or so; but there were a few fellows working out of the—in that part of the laboratory, that were entitled to membership.

Q. They were entitled to membership?

A. Yes, sir. They were working on furnace and production work there.

Q. They were working on furnace and production work.

A. Yes, sir, and on tantalum.

Q. What?

A. Tantalum.

Q. On tantalum.

A. Yes, sir.

Q. They were assistants?

627 A. Yes, sir.

Q. Were they more like,—or, was their work more like that of a laborer—

A. Yes, sir.

Q. —than it was that of a doctor or professor?

A. Yes, sir.

Q. The plant has, as I understand it, a number of people whom they call engineers, who work largely in drawing specifications, and making blueprints for various products which the company will make and sell.

A. Yes, sir.

Q. Do you admit those engineers to membership in your union?

A. No, sir; they are outside the fence.

Q. They are outside the fence.

A. Yes, sir.

Q. You testified at the beginning of your testimony, as I understood it, that at the time these so-called efficiency men went through your departments, and particularly through the cutting department, those who were paid approximately \$6 to \$7 on a piecework basis were afraid that their wages were going to be reduced?

A. Yes, sir.

Q. Were people paid on a piecework basis at that time?

A. They were.

Q. How long have people been paid—or, how long  
628 since then were people paid on a piecework basis in that factory?

A. In that particular department?

Q. Yes.

A. Well, I don't—

Q. Did they continue to be paid on a piecework basis after February 1937?

A. That I don't recall, because I didn't work in that department.

Q. I see.

A. I am in the machinists department, tool room.

Q. Do you know the names of any people who worked on a piecework basis?

A. Yes.

Q. What are their names?

A. Clarence Dreyer.

Q. Yes?

A. Thomas Fagan; and Charles Fulkerson.

Q. (By Mr. Walsh) Is that Junior or Senior?

A. How?

Q. Junior or Senior?

A. Fulkerson?

Q. Yes.

A. Senior.

Q. Senior.

A. Yes, sir.

629 Q. (By Trial Examiner Dudley) Were those men all in the cutting department?

A. There are some more in the cutting department.

Q. Well, those men—

A. Yes.

Q. —worked, and were paid on a piecework basis.

A. Yes.

Q. And not on an hourly basis?

A. To my knowledge, they were on a piecework rate. But as to this so-called efficiency man that was there, there had been some kind of a change. I believe it was presented to them by the superintendent, Mr. Luther, at that time.

Trial Examiner Dudley: I see. I have no more questions at this time. Does anyone else have any questions? If not, the witness is excused. Thank you.

(Witness excused.)

Mr. Walsh: If the Examiner please, how late do you desire to run tonight? I have plenty of witnesses available now.

Trial Examiner Dudley: I am free to go until at least five-thirty.

Mr. Walsh: I am going to ask that the Examiner explain the privilege to this next witness.

Trial Examiner Dudley: You say, you do want to claim it?

Mr. Walsh: Yes. Swear the witness, please.

630 CARL ANDREW SWANSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Walsh: I will ask the Examiner to explain to the witness the provision of privilege under this law, and ask the witness whether or not he claims the privilege.

Trial Examiner Dudley: I wish to explain to you, Mr. Witness, that the normal legal procedure provides that if a witness is asked questions which call for replies that might later be used to incriminate him, or find him guilty of some crime or misdemeanor or wrong, he can ordinarily refuse to answer such questions. The Wagner Labor Relations Act under which we are operating, specifies that you must answer questions of that nature, but in this case, if you first claim the privilege of immunity, or the privilege of being exempt from punishment for any such crimes, misdemeanors or wrongs, then after you give the testimony, on being subpoenaed, you will be excused from those misdeeds, crimes and so forth.

The Witness: Yes, I wish to claim that.

Trial Examiner Dudley: You wish to claim that privilege?

The Witness: Yes, sir.

Trial Examiner Dudley: All right.

*Direct Examination.*

Q. (By Mr. Walsh) Will you state your full name, please.

A. Carl Andrew Swanson.

631 Q. Where do you live?

A. 1416 Lloyd Avenue; Waukegan, Illinois.

Q. I will ask you if you are at this time confined in jail?

A. Yes, sir.

Q. And you have come into this hearing room in response to a subpoena?

A. Yes, sir.

Q. And you have come of your own will; is that right?

A. Yes, sir.

Q. Freely?

A. Yes, sir.

Q. I believe that you are employed by the Fansteel Metallurgical Corporation?

A. Yes, sir.

Q. When were you first employed by that company?

A. In 1920, I believe it was; either the end of 1920 or the beginning of 1921.

Q. And what work did you do there?

A. At that time I was an oiler, belt man.

Q. (By Trial Examiner Dudley) What?

A. Belt man; repair man.

Q. (By Mr. Walsh) You later however were a millwright; is that correct?

A. Yes, sir.

Q. When did you first join Lodge 66?

632 A. July 1936.

Q. Now, Mr. Swanson, will you tell us in your own words as clearly as you can, stating dates as nearly as possible, just how the union started in the Fansteel plant, how it grew up, and all about it; just tell us all about it.

A. Well, in July one of the employees of the Fansteel Metallurgical Corporation approached me—

Q. Speak a little louder, please, Mr. Swanson.

A. I say in July 1936 one of the employees of the Fansteel Metallurgical Corporation approached me, and had

asked me if I had heard the boys talk of forming a union for collective bargaining. I said yes; and he asked me if I would be willing to join. I stated that I would be if the members would all go together, and for good purposes, and so forth. He stated that that was the intention of all of them; and so I signed. The first meeting that I attended was a kind of committee meeting.

Q. Do you recall what date that was?

A. That was in the early part of July. The organization had not yet elected officers, or anything, and it was talked of at that time I believe to pick a meeting date, and so forth. The next meeting that I attended was August 5th, 1936, I believe.

Q. And where was that meeting held?

A. In the Waukegan Hotel, Waukegan, Illinois.

Q. Will you tell us what took place at that meeting?

633 A. At that meeting the officers took the oath, and we were given talks by Mr. Van Bittner, Mr. Walsh, and there were several other speakers sent from the Central Labor Council of Waukegan, Illinois, I believe. I believe it was decided to hold our next meeting at the Slovenik Hall at that time.

Q. Now, that next meeting was upon what date, do you remember?

A. (No answer.)

Q. August 14th, to be exact?

A. I believe that is correct.

Q. Will you tell us what happened at that meeting on August 14th.

A. Well, on August 14th, why, I believe it was decided at that meeting to hold our regular meetings on the first and third Fridays of each month, at the Slovenik Hall, in hall or room—Lodge No. 3, I believe it is; and that we go ahead and form committees, select additional officers who were needed in the lodge, and to hold—

Q. Do you recall what officers were elected at that meeting?

A. I believe there were guards; I believe there were inside and outside guards; and certain trustees.

Q. You were elected to an office that night, were you not?

A. I believe so.

Q. And that office was that of financial secretary; is  
634 that correct?

A. Yes, sir.

Q. Now, will you tell the Examiner for what purpose Lodge 66 was formed?

A. To represent the employees in collective bargaining with their employer, under the rights of the Wagner Labor Law of the United States.

Q. Who are eligible for membership in this lodge?

A. All employees that were working at the Fansteel Metallurgical Corporation, that had no power to hire or fire, I believe.

Q. Yes.

A. (Continuing.) But no office employees or laboratory employees or foremen, were eligible.

Q. Now, how did you go about getting members in the lodge?

A. Well, just different ones—just through our friends, and so forth; or sometimes, if you knew somebody that was in another department, that you were better acquainted with than somebody else, you would probably be asked to call upon them and ask them their views upon the subject, what they thought of it, if it was a good idea and so forth.

Q. Now, are you able to tell me, in the absence of your records, the number of members that you had in the lodge on September 10th, 1936?

Mr. Swiren: That is objected to, if the Examiner 635 please, unless the records are produced. We have called for those records, so that the Board may well know the entire state of facts correctly.

Trial Examiner Dudley: Read the question to me, please, Mr. Reporter.

(The question was read.)

Mr. Swiren: I do not think it ought to be brought in second-hand.

Mr. Walsh: Unfortunately my witness has not recently been in a position to obtain the records, your Honor.

Mr. Block: Somebody has them.

Mr. Swiren: Counsel had better withdraw his question.

Trial Examiner Dudley: The witness may answer.

A. Between 86 and—

Q. (By Trial Examiner Dudley): No, the question is, are you able to tell us the number of members that you had.

A. Not—well, I would say, yes, sir.

Mr. Walsh: What is the answer?

Trial Examiner Dudley: The answer is "Yes", that he is able to tell you the number of members that they had.



Q. (By Mr. Walsh): Will you state the number of members that you had in your lodge on September 10th, 1936?

Mr. Swiren: Objection.

Trial Examiner Dudley: Overruled.

A. 86.

636 Q. (By Mr. Walsh): Mr. Swanson, how many persons employed at the Fansteel Metallurgical Corporation were eligible to belong to Lodge 66 on the 10th of September, 1936?

Mr. Swiren: That is objected to. This witness is not in a position to testify as to those facts. They are part of the corporate records, and we stand ready to produce any records that may be requested.

Trial Examiner Dudley: This witness has testified that he is a member; that he was present at the organizing meeting, the first meeting; and that he is financial secretary. He has testified as to the purpose of the organization, and the members who are eligible. He is an employee of the plant, and has been since 1920 or 1921. It seems to me he has shown a sufficient basis for being able to answer the question.

Mr. Swiren: But I do not think we ought to be called upon to speculate, if the Examiner please. We ought to have the actual facts. Why speculate as to what this witness knows? We will bring the records in.

Mr. Walsh: Of course if you want to prove it, counsel, I see no objection to that.

Trial Examiner Dudley: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: I would like to have the witness answer the question.

637 Trial Examiner Dudley: I will rule that the witness may answer the question, and if counsel for respondent wish to bring in any better information, such information will be welcomed in the testimony.

Mr. Swiren: Oh, I take it we will have our turn.

A. Not over 160.

Q. (By Trial Examiner Dudley): Not over 160?

A. No, sir.

Q. (By Mr. Walsh): Mr. Swanson, can you tell me how many members you had on September 21st, 1936?

Mr. Swiren: May an exception be noted to the entire line of questioning, so that we will not have to delay the hearing?

Trial Examiner Dudley: The record may show that an exception is noted.

A. I would say, 86.

Q. (By Mr. Walsh) 86?

A. Yes, sir.

Q. And do you know how many persons employed by Fansteel Metallurgical Corporation on September 21st, were eligible to membership in the lodge?

A. Not over 160.

Q. (By Mr. Keele) What is the answer?

A. Not over 160.

Q. (By Mr. Walsh) Directing your attention to 638 February 17th, 1937, can you tell me how many members Lodge 66 had?

Trial Examiner Dudley: What date?

Mr. Walsh: February 17th, 1937.

A. 154.

Q. (By Mr. Walsh) And can you tell me how many persons employed at Fansteel Metallurgical Corporation were eligible to membership in Lodge 66 at that time?

A. Not exactly the number, no.

Q. Could you make—could you come close to it?

A. Not over 180.

Q. Not over 180.

A. Yes.

Q. All right. Now, Mr. Swanson, after the organization of this lodge was there a Grievance Committee, a Negotiating Committee formed?

A. Yes, sir.

Q. Will you tell the Examiner about that; who was on it, if you can remember; and how the committee was made up?

A. The officers of the lodge were automatically members of the committee, and we tried to classify the departments, according to the number of employees, grouping the smaller departments together, so that each group of employees would be fairly represented upon this bargaining committee; and as the membership increased, why, we appointed more members to the bargaining committee.

Q. Now, do you recall about how many members you 639 had on the bargaining committee after you had gotten organized?

A. The last report I would say was 18 to 20 members. I think it was 18,—or 20; I am not sure now.

Q. Now, Mr. Swanson, this is not a very large shop in the way of numbers, is it?

A. No, sir.

Q. Most of the men employed are pretty highly skilled men, are they not?

A. Yes, sir.

Q. I will ask you whether or not the company suggested that the employees organize into a Representation Plan?

A. Yes, sir.

Q. Will you tell us whom they asked you to include in that plan?

A. That plan—I don't remember exactly who all it included, but it was an Employee Representation Plan.

Q. Yes. Well then, let us pass on for the moment—

Trial Examiner Dudley: May we have the date?

Mr. Walsh: Pardon me?

Q. (By Trial Examiner Dudley): About what was the date they asked—or suggested this Representation Plan?

A. Well—

Q. Do you remember?

Mr. Walsh: I will develop that a little later.

640 Trial Examiner Dudley: All right. I will withdraw the question.

Q. (By Mr. Walsh): Now, between July of last year, and February of this year, was there any other labor organization in the plant except Lodge 66?

A. No, sir.

Q. All of your members are paid on an hourly basis, are they not?

A. I think so.

Q. Lodge 66 is an industrial type of organization, is it not?

A. Yes, sir.

Q. And that is the type of organization that the employees selected, is it not?

A. Yes, sir.

Mr. Walsh: That will be all of my questions for the present. You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele): I understood you to say that in September there were 86 members of Lodge 66.

A. Yes, sir.

Q. And that Lodge 66—you were secretary and treasurer, were you not?

A. I was financial secretary.

Q. Financial secretary.

641 A. Yes, sir.

Q. Who was the secretary at that time?

A. The recording secretary?

Q. Yes.

A. Edward Ruck.

Q. Did the lodge keep records, membership cards, or something of that character?

A. Yes, sir.

Q. Who keeps those cards—or who kept those cards at that time?

A. Well, they were kept at various places. They were kept in the office sometimes, at the Steel Workers Organizing Committee.

Q. By whom were they kept; I mean in whose custody were they?

A. They were in my custody, sir.

Q. And are you basing your statement as to the number of members of Lodge 66 on September 10th, on the cards or records in your possession, or that were then in your possession?

A. Yes, sir.

Q. Is that the way you arrive at your figure?

A. Yes, sir.

Q. Will you name the members of the lodge on September the 10th?

A. That is not possible.

642 Mr. Walsh: That is objected to.

Trial Examiner Dudley: You mean, all 86?

Mr. Keele: I would like to test out whether or not he does know.

Mr. Walsh: That is objected to.

Mr. Keele: He has made the statement that there were 86.

Mr. Walsh: I object, if the Examiner please.

Mr. Keele: We have no way of knowing whether or not that is an accurate statement, and we would like to test it.

Q. (By Trial Examiner Dudley) Well, can you list the 86 names—

A. No, sir.

Q. —from memory, now?

A. No, sir.

Q. (By Mr. Keele) Well, will you tell us exactly just how you know there were that many on that date?

A. I have counted the cards. The cards are marked, when they were initiated, and when they paid their dues.

Q. Well now, when did you—

A. (Continuing) There might have been more in the lodge at that time, but these were actual dues cards—because some of the membership cards had not been turned in; members had been signed, additional members had been signed, but the cards had not been turned back. But they was actual dues cards, by which I know these members belonged, bona fide members.

643 Q. And your statement as to the number of members of Lodge 66 on September 21st, and on February 17th, is based in the same manner—or has the same basis?

A. Yes, sir.

Q. Do you know where those cards are now?

A. No, sir; I do not.

Q. Were there any other records kept as to membership, indicating the membership of the Lodge, the number of people, and who they were, in the Lodge?

A. I couldn't say that, sir.

Q. Well, when did you last see those cards?

A. Well, it was a week and a half or two weeks ago, sir.

Q. Where were they then?

A. Slovenik Hall.

Q. Now, you say—you stated, as I understood you, that on September 10th there were 86 members of Lodge 66, and not over 160 employees of the company were eligible; is that correct?

A. That is my recollection.

Q. Now, upon what—or, rather, by what—did you determine who was eligible and who was not eligible, and how many there were eligible?

A. As far as the eligibility of a member is concerned, I believe I explained that; and the number.

Q. Well, will you explain it again, please. I am sorry, but I did not get that, as to how you determined whether they  
644 were eligible or not.

A. Any man who was employed at that time by the company, the Fansteel Metallurgical Corporation, exclusive of the office and laboratory, that did not have the right to hire and fire.

Q. All right.

A. (Continuing) Who was not listed as a foreman.

Q. That was the test, but who laid down that test as to who was eligible and who was not? Who gave that test?

A. I don't know that, sir.

Q. Well, was that your rule, or was that the way you handled it?

A. That was the way it was explained to me.

Q. By whom?

A. I couldn't say that, sir. It was at one of the meetings that we had.

Q. Was there anything in the by laws to that effect?

A. We were working—I believe we were operating under a temporary set-up, with a convention to be called.

Q. Mr. Swanson, do I understand, then, from that, that the test which you have applied as to the eligibility of employees on September 10th, was a test that was given to you, or an eligibility rule that was given to you by somebody else, whom you do not recall?

A. Yes, sir; it was at a meeting, and I don't remember who explained it. It was brought up at a meeting, and 645 they explained certain rules, and so forth, that were required by the organization; but as to just who explained it, I don't remember.

Q. Now, you have testified that on September 21st there were 86 members in Lodge 66, and not over 160 employees of Fansteel Metallurgical Corporation eligible to membership.

A. Yes, sir.

Q. Was your rule of eligibility the same on that date, September 21st, as it was on September 10th?—the test you applied as to whether a man was eligible or not?

A. Yes, sir.

Q. And as to your information as to the source of that rule, or test, would your answer be the same, that you got it at a meeting, but you do not recall who gave you that formula, or test, as to eligibility?

A. Yes, sir.

Mr. Walsh: Speak up, Mr. Swanson, so that the reporter can hear you.

Q. (By Mr. Keele) As I understand it, on February 17th you stated that there were 154 members in the Lodge, and not over 180 employees of the plant of Fansteel Metallurgical Corporation, eligible.

A. Yes, sir.

Q. And you applied the same rule of eligibility in arriving at that figure of 180, as of February 17th, did you?

646 A. I don't believe that there was any change in the rule at that time.



Q. Well, on February 17th, 1937, had you learned the source of that formula, or the rule, as to eligibility?

A. No, sir.

Q. Well, as I understand it, then, that is your view of the test of eligibility, and you received it from someone else, but you do not know who?

A. Well, I don't know whether the organization had it in its bylaws or not. I believe it was at that time in the bylaws.

Q. I believe you stated that some of the men in the laboratory were eligible for membership. Did you say that, or not? I am not sure.

A. Well, I believe that some of the men were transferred to the laboratory, who were working out in the plant previously.

Q. Were they eligible?

A. They were doing production work. What we considered in the laboratory, was laboratory work, and so forth; but anybody doing anything that in any way would be considered as production work, they were eligible; but not anybody on laboratory work.

Q. Well, if men were transferred from the factory, or the production end, to the laboratory, to work in the laboratory, would they still remain members,—or would they still remain eligible for membership?

647 A. If they were doing production work.

Q. Supposing that they were transferred to laboratory work.

A. Well, if they were assigned to laboratory work permanently, they would not come under that classification.

Q. That would remove them.

A. Yes, sir.

Q. From eligibility.

A. Yes, sir; because the understanding is that the laboratory men are on monthly salaries.

Q. Now, when was the work of organizing the lodge, the organization work, carried on? Was it carried on during working hours in the factory?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. There was no talk, as far as you know, among the men with reference to the organizing, or the forming of this organization, during working hours?

A. With respect to organizing, I don't believe that there was; no, sir.

Q. You did not do any?

A. No.

Q. You are sure of that?

A. To go out and organize during working hours?

Q. Yes.

648 A. No, sir.

Q. Well, did you try to persuade anyone during working hours to join the union?

A. No, sir.

Q. Did anyone else, to your knowledge, who was interested in the organization of this Lodge 66, talk to prospective members of the Lodge who were eligible to join the Lodge, during working hours, about joining?

A. I don't know.

Q. But, to your knowledge, there was none of that done; is that correct?

A. Well,—

Q. To your knowledge?

A. No, sir. I have had men address me, and ask me if I belonged to the union, and so forth, as I was walking through their department, or something like that.

Q. And what did you do on those occasions, Mr. Swanson?

A. I told them "yes."

Q. And did you discuss the matter any further with them? Did you discuss the matter any further with them at such times?

A. Well, they might have made other remarks to me about the union at that time, as I was working, but I couldn't say for sure just what was said.

Q. You were in the Maintenance Department—

649 A. Yes, sir.

Q. —during the period September to February, were you not; that is, September 1936 to February 1937?

A. Yes, sir.

Q. So that your work required you to go from one department to another?

A. Yes, sir.

Q. Throughout the plant.

A. Yes.

Q. Did you go into practically every department of the plant in the course of your work during that time?

A. Yes, sir.

Q. Could you say whether or not you talked with men in each one of the departments of the plant during that time with reference to the union, during working hours?

A. To every man?

Q. To some men in every department.

A. No, sir; I couldn't say that I did.

Q. Well, now, as I understand it, no foremen—you stated this, as I understood you, and I just want to be sure that I am correct—no foremen were eligible to membership?

A. Right.

Q. Do you know the fact as to whether or not Mr. Bisbee was asked to join the union?

A. I believe so; yes, sir.

650 Q. He was a foreman at that time, was he not?

A. I don't know. I don't believe he was, sir; not at that time; no, sir.

Q. Well, what was his classification at that time?

A. I believe he was a rod grinder. I don't recollect just what his classification was, but I believe he was a rod grinder; and I believe he worked on special jobs, on contacts.

Q. Well, did he have the power to hire or fire men?

A. I don't believe he did, sir.

Q. Mr. Bisbee at that time was on an hourly rate of pay, was he not?

Mr. Walsh: If the examiner please, may I object to this line of examination? I desire to know the materiality of it.

Mr. Swiren: On the question of eligibility.

Mr. Keele: I am just testing—

Mr. Walsh: As to whether Mr. Bisbee was a member of the union?

Mr. Swiren: We do not have the union records. That is what we have been trying to get into court.

Mr. Keele: Mr. Walsh—or perhaps I should rather address the examiner: The purpose of it is to go into the matter of eligibility, as Mr. Swiren has said. The statement has been made, as I understand the evidence, that only men working in a certain classification were eligible. I am trying to find out, with reference to this man, whether or not they enlarged  
651 the rule of eligibility. I only intended to ask him one or two further questions.

Mr. Walsh: All right. I do not want to interrupt too much.

Mr. Keele: I am not going to pursue it unduly. May I ask the question, your Honor?

Trial Examiner Dudley: Yes.

Mr. Keele: May I proceed?

Trial Examiner Dudley: Yes. The objection is overruled,

Q. (By Mr. Keele) Mr. Swanson, do you know whether or not Mr. Bisbee, at the time that he was asked to join the union, was on an hourly rate of pay?

A. I do not, sir.

Q. Now, with reference to the 86 members on September 10th: Did that include any women employees?

A. Sir?

Q. Did the 86 members of Lodge 66, which you stated was the number on September 10th, include any women employees?

A. I couldn't say right now.

Q. Well, on September 21st were there any women employees included in the membership of Lodge 66?

A. There were.

Q. Somewhere along in that period, there were?

A. There was women included in the membership, but they hadn't been—some of the cards hadn't been turned in to me, and I couldn't swear whether they had been taken in at that time or not; but there was women members signed up in September at that time; I know that.

Q. How many do you recall?

A. No, I don't know.

Q. Well, on February 17th, I assume from your answers that there were women members of Lodge 66?

A. Yes, sir.

Q. Do you know how many there were on February 17th, how many women members?

A. No, sir; I don't.

Q. When you said there were not over 180 employees eligible, you were counting women employees who fell within that classification of eligibility, were you?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That will be all at this time, Mr. Swanson.

Trial Examiner Dudley: I would like to ask you a few questions, Mr. Swanson, regarding this eligibility rule.

The Witness: Yes, sir.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) You stated that at your meetings the eligibility rule was explained by someone whom you do not recall at this time.

A. Yes.

653 Q. Was it explained to you by someone who was a member of the union?

A. Yes, sir.

Q. Who was an employee of Fansteel?

A. Yes, sir.

Q. Your lack of memory is as to which one of the group it was—

A. Yes, sir.

Q. —who explained it?

A. I couldn't recall.

Q. But you know that it was one of your own group, who explained it?

A. I heard it discussed twice. That was the first time I had heard it discussed at a meeting, one of our first meetings. Somebody spoke as to the eligibility of members. Then it was discussed afterwards.

Q. I see. Now, as to the discussions that were had as to eligibility: Could you tell me upon what they were based? That is, were they discussions of what kind of people should and should not be eligible because of rules and bylaws, or because of the nature of the work they were doing, or for some other reason?

A. Now, we considered the laboratory, the office, and the foremen, that they were not—that they didn't belong in that classification of employee representation, sir.

654 Q. Of what?

A. Or, rather, of collective bargaining, I should say.

Q. By that do you mean that in your judgment, you felt that that type of work was not the type which would fit in with the rest of you, as to such a man's desires, as to wages, hours, and such matters?

A. Yes, sir.

Trial Examiner Dudley: Are there any other questions?

Mr. Walsh: Not at this time.

Mr. Keele: Nothing further.

Trial Examiner Dudley: The witness is excused.

(Witness excused.)

Mr. Walsh: May I suggest, if the examiner please, that we now adjourn for this day? It is nearly 5 o'clock. I have some matters that I would like to discuss with my witnesses before I proceed.

Mr. Keele: That is agreeable, as far as we are concerned.

Trial Examiner Dudley: What time would counsel desire to reconvene in the morning?

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Mr. Keele: 9:30, if that is agreeable to counsel and the examiner.

Trial Examiner Dudley: It is agreeable to me.

Mr. Walsh: That is all right.

Trial Examiner Dudley: We will adjourn at this time, then, until 9:30 o'clock tomorrow morning.

655 (Thereupon, at 4:45 o'clock p. m. Thursday, June 10, 1937, an adjournment was taken until Friday, June 11, 1937, at 9:30 o'clock a. m., in the courtroom of the Circuit Court of Lake County, County Court House, Waukegan, Illinois.)

659 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80) • •

Circuit Court Room, County Building,  
Waukegan, Illinois,  
Friday, June 11, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock A. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Mix Swiren, Harold M. Keele, Suite 225, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

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PROCEEDINGS.

Trial Examiner Dudley: I call the hearing to order. Are you ready to call the first witness?

Mr. Walsh: I would like to introduce, if the Examiner please, certain economic data in relation to the strikes for the year 1935.



Mr. Swiren: Will you identify them, so I can make my objections for the record.

Mr. Walsh: Yes. Mark this Board's Exhibit No. 9 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 9 for identification.)

Mr. Walsh: Board's Exhibit No. 9 for identification is a review of strikes in 1935.

Mr. Swiren: By whom?

Mr. Walsh: This is a publication of the division of industrial relations of the department of labor, serial No. R-389.

Mr. Reporter, mark this Board's Exhibit No. 10 for identification, please.

(The document referred to was thereupon marked Board's Exhibit No. 10-for identification.)

Mr. Walsh: Board's Exhibit No. 10 for identification is a mimeographed sheet entitled "Table 6—major issues involved in strikes beginning in 1936", which is an excerpt from the Monthly Labor Review of May, 1936, page 1308.

661 Mr. Swiren: May I ask what the purpose of those exhibits is?

Mr. Walsh: This is supporting economic data which is always introduced in the trial of these cases, and becomes part of the supporting economic data of the case.

Mr. Swiren: I do not think anything ought to go in here because Mr. Walsh or anybody else is accustomed to offering it. It ought to have some materiality to these issues.

So far as I have been able to determine, these have no bearing whatever upon the controversy here in question, and have nothing to do with the industry with which we are concerned.

So far as I have been able to check, none of these statements make any reference whatever either to our company or to our industry or to our community. What may happen generally around the country in the dry goods business, or in the steel business or the automobile industry cannot have any bearing on these issues.

Trial Examiner Dudley: I assume from the titles of this material, it shows the importance of settling industrial controversies and labor controversies peacefully, and the probable effect upon interstate commerce of labor controversies.

I will therefore allow both exhibits to be introduced as evidence of such information on as they may give.

(The documents referred to were received in evidence and

marked BOARD'S EXHIBITS NOS. 9 and 10 respectively.)

662 Mr. Keele: May we state more fully the basis of our objections?

Trial Examiner Dudley: Yes.

Mr. Keele: In the first place, these exhibits do not appear to have any relevancy to the inquiry at hand, as to whether or not the Fansteel Metallurgical Corporation violated the provisions of the National Labor Relations Act.

In the second place, we have no way of knowing by whom these were prepared. We have no way of knowing by whom the article referring to strikes in 1935 was prepared.

There is no guarantee as to the authenticity of the accuracy of the figures involved. It purports to have been prepared by one Florence Peterson—or rather, by the Division of Industrial Relations, Florence Peterson, chief. It purports to have appeared in the Monthly Labor Review for the month of May, 1936, Bureau of Statistics, United States Department of Labor. It has not been identified as having appeared in that publication. It has not been identified as having been prepared by the Division of Industrial Relations. That applies to Exhibit No. 9.

Exhibit No. 10 is simply a mimeographed copy which may have been picked up, so far as we know, on the streets of Waukegan. It might have been prepared by anybody. There is no guarantee as to its accuracy or authenticity, nor as to its source. There is nothing to indicate that the exhibit 663 has any pertinency to the issues involved here.

On those grounds we object to the introduction of both of the exhibits, and ask that they be excluded from the record. I believe the Examiner has ruled. I assume our objections may stand, although they have been ruled upon.

Trial Examiner Dudley: Your objections will be noted in the record, but the ruling will stand.

Mr. Keele: Very well.

Trial Examiner Dudley: You may call your first witness.

Mr. Walsh: Mr. Ruck.

EDWARD RUCK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh) State your full name, please.

A. Edward Ruck.

Q. Where do you live?

A. 336 South Victory Street, Waukegan, Illinois.

Mr. Walsh: Mr. Examiner, I would like to have the Examiner explain to the witness his right to the claim of privilege. He is appearing here in response to a subpoena of the National Labor Relations Board.

I might state to the Examiner that he was present in the court room yesterday when you explained what that meant, and I believe he understands what it means. I believe he understands what it means to claim privilege.

664 Trial Examiner Dudley: Mr. Ruck, you heard me explain yesterday the right to privilege that witnesses have against self-incrimination. The Board, under the present law, may compel a witness to testify, but he may request and obtain the immunity specified by the Act.

Do you wish to claim your privilege?

The Witness: I do.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh) Mr. Ruck, you were employed by the Fansteel Manufacturing Company in 1917, were you not?

A. I was.

Q. You will have to speak up louder so Mr. Swiren and Mr. Keele can hear you?

A. All right.

Q. You are an automatic screw machine operator?

A. Yes, sir.

Q. When did you join lodge 66?

A. It was somewhere around the middle of July. I don't know the exact date.

Q. Did you at one time hold an office in lodge 66?

A. I did; recording secretary.

Q. What are the duties of recording secretary, Mr. Ruck?

A. To keep minutes of the meetings, transactions, and take care of whatever correspondence there is.

Q. As the recording secretary of this lodge, did you 665 attend its meetings?

A. Not all of them.

Q. Directing your attention to July of 1936, what meetings did you attend then?

A. I believe there was one somewhere around the 21st of July, I believe.

Q. Will you tell the Examiner just in your own words the story about the meetings you attended, and the manner in which this organization grew up, as you know it.

Trial Examiner Dudley: Speak loudly enough so that we can all hear you. There are a lot of people here who want to listen to you.

The Witness: Well, along in June some time, there seemed to be quite a lot of unrest through the plant, and some of the boys got to talking about forming a union. Some of them asked me if I would join, and I said, "It is O. K. with me. If they want a union, all right."

I think it was on the 4th of July that I left on my vacation. I was gone around 10 or 11 days, or something like that. When I got back I saw one of the boys; he came to me and he says, "Well, we decided to organize into the Amalgamated Association", and he asked me if I would sign, and I signed.

The first meeting I attended, I think was around the 21st of July. It was along toward the end of July sometime. It was down at Slovenik Hall. It was at that meeting where 666 I met Mr. Adelman, and it was at that meeting when temporary officers were elected, and I was elected recording secretary at that time.

As far as the formation of the union is concerned, that is about all I know.

Q. I see. Did this organization have a negotiating committee?

A. They did.

Q. Directing your attention to September 10th, or prior to September 10th, did the negotiating committee call upon the officers of the company for the purpose of obtaining the use of the bulletin boards of the company?

A. Not in September, no.

Q. Did they ever call upon the company for that purpose?

A. They did; it was some time in August, I believe.

Q. All right. Tell the Examiner about that.

A. Well, after the meeting at which the officers had been elected, there was another meeting held at the labor hall on Washington Street, one Sunday, and the officers that had been

elected, and the committee, met there to formulate plans for a meeting to be held in the Waukegan Hotel, where the officers that had been elected would be duly installed.

It was decided to call upon the management of the company and ask permission to put bulletins on the bulletin board calling attention to this meeting. If I remember right, there was myself, and Carl Swanson, Clarence Dreyer, John Kond-  
667 rath; they were the ones that were picked to call upon the management at that time.

Q. Did they call upon the management?

A. They did.

Q. Were you on that committee?

A. I was.

Q. Will you tell us who you saw of the management when you called on them?

A. There was Mr. Aitchison, Mr. Troxel, Mr. Dow, and Mr. Henry.

Q. Will you tell, as near as you can remember, just what happened at that meeting?

A. Well, I think it was either Clarence Dreyer or John Kondrath was the one that arranged the meeting; I don't know with whom, although the rest of us were notified that the management would meet this committee, would meet with us at a certain time.

We went over to the office. As I said, the gentlemen I mentioned were present, and we explained that we were forming a union, and that we were applying for a charter, and the temporary officers had been elected, and so on and so forth, and asked them if they would give us permission to use the bulletin board.

Then it turned into a discussion of why a union, and why not a union. It lasted a little while. Eventually we were  
668 refused permission to use the bulletin board for that purpose.

Q. I see. Was the union granted the use of the bulletin board for any other purpose?

Mr. Swiren: That is objected to, if your Honor please. There was no obligation on the part of the company to grant the use of the bulletin board or any other corporate facilities to this union.

Trial Examiner Dudley: Objection overruled; it may tend to show the attitude of the company toward unions.

Mr. Walsh: You may answer, Mr. Ruck.

The Witness: I don't know whether permission was re-

fused for any other purpose or not. There was union articles and clippings out of the newspapers and so forth put on the bulletin board at different times.

Q. (By Mr. Walsh) There were newspaper clippings put on the board, were there?

A. Yes.

Q. Now, were you a member of the negotiating committee which called upon the company on September 10th, 1936?

A. I was.

Q. Do you recall who was on that committee?

A. There was John Kondrath, Carl Swanson, Clarence Dreyer, myself, and Angelo Galbavy. I cannot recall the rest. I think there was around seven; I am not sure.

Q. Now, for what purpose did the committee call upon 669 the management on September 10th?

A. To present a contract.

Q. Who of the company did you see on that day?

A. Mr. Anselm.

Q. Did you see any other members of the company?

A. No, I don't think so.

Q. What position did Mr. Anselm occupy with the company at that time?

A. He was plant superintendent.

Q. Now, will you tell the Examiner as near as you can remember what the committee said to Mr. Anselm, and what Mr. Anselm said to the committee.

Mr. Swiren: Let us identify the man who did the talking, on the committee, in connection with that conversation.

The Witness: Well, I was spokesman for the committee that time. As near as I can remember, why, I told Mr. Anselm that he probably knew there had been a union formed, and they had decided it was time to present a contract to the company.

I handed the contract to Mr. Anselm, and I told him that that was a contract we presented for his consideration. Mr. Anselm read it through, and he said it was quite a document, as near as I can remember.

He said there wasn't anything in it that he didn't think that eventually he could grant us, except one thing, union recognition.

670 Q. What did he say about union recognition?

A. Well, I don't just recall. It seems to me he said it was the principle of the company not to recognize any outside union.



Q. Did he at that time make any suggestions about who should be on the negotiating committee?

A. I don't know, as far as suggestions are concerned. I believe John Kondrath was the man who arranged this meeting. The committee was quite large, as I remember, the original committee. The way I got it from Mr. Kondrath as that—

Mr. Swiren: We object to these statements that Mr. Kondrath made to Mr. Ruck. Mr. Kondrath is a party. He has been a witness, and probably will be a witness again according to Mr. Walsh's statement.

If he said anything to us, or to anybody on behalf of the company, he can testify about it. We have had nothing but second hand and third hand testimony, so far.

Mr. Walsh: The mere fact, if your Honor please, that the witness is testifying to what might be hearsay, does not render the testimony incompetent before this body.

Trial Examiner Dudley: The witness may answer.

Q. (By Mr. Walsh) Go ahead, Mr. Ruck.

A. Mr. Anselm made no suggestions, and made no request to the committee. As I was saying, John Kondrath was the one that arranged the meeting.

671 He said that Mr. Anselm had said that he would not—that he didn't want anybody on that committee that had not been with the company at least five years, and the committee was kind of large.

Q. What did the organization do about rearranging that committee?

A. They had a meeting in the yard during the noon hour, and it was decided to cut it down, and just take the ones that had been there five years or more.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren) Are you a member of lodge 66 now?

A. Yes.

Q. Are you an officer?

A. No.

Q. When did you cease being an officer?

A. Well, it was about two months ago. I was informed somebody had been elected to take my place.

Q. You were informed by whom?

A. Well, I don't just recall who it was now.

Q. You had your records, as recording secretary, in your

possession at the time you ceased to be recording secretary, is that not right?

A. Up until about two months ago.

Q. Of what did those records consist?

672 A. Just the minute book and seal.

Q. Did you have any list of members of the lodge?

A. No, sir.

Q. Did you have any information as to the number of members?

A. No, sir.

Q. From time to time?

A. No, sir.

Q. What did you do with those records when you were informed you were no longer recording secretary?

A. They were left down at union headquarters quite a while before I was informed that somebody had been elected to take my place.

Q. Where is union headquarters?

A. Slovenik Hall.

Mr. Walsh: I object; that is not material, if the Examiner please.

Trial Examiner Dudley: He may answer.

The Witness: Slovenik Hall, 10th Street.

Q. (By Mr. Swiren) Are they kept under lock and key there?

A. I don't know.

Q. Where did you put them last time?

A. I left them on the table down there.

Q. You just left them on the open table, and walked out of the room?

A. Yes.

673 Q. You did not bother about putting them away?

A. No.

Q. You do not know what happened to them since that time?

A. I left them in the custody of Mr. Swanson at that time.

Q. You left them with Mr. Swanson?

A. Yes; they were on the table.

Q. Was Mr. Swanson sitting at the table, or standing near it?

A. Well, I don't recall just where he was; he was somewhere around there.

Q. Did you tell Swanson you were leaving the records in his custody?

A. Yes.

Q. What did he say.

A. "O. K."

Q. And that is the last you saw of those records?

A. (No answer.)

Q. That is the last time you saw the records?

A. That is the last they were in my possession.

Q. Was that the last time you saw them?

A. No.

Q. When did you see them again?

A. I saw the minute book about a month ago.

Q. Where did you see that?

A. Down there.

Q. In whose possession was it at that time?

674 A. Mr. Swanson's.

Q. Did you ever see any of the membership cards of the lodge?

A. Yes.

Q. When did you see those last?

A. That is hard to say; I don't remember that.

Q. Give us your best recollection, Mr. Ruck.

A. I may have seen them that same day. I wouldn't want to say for sure.

Q. In whose possession did you last see them?

A. Mr. Swanson's.

Q. Were there also membership lists that the officers of the lodge had? Were there any other membership records?

A. Not that I know of.

Q. There were records, were there not, with reference to the payment or non-payment of dues?

A. They were all in the custody of Mr. Swanson, as financial secretary.

Q. Those were all in Swanson's custody?

A. Yes.

Q. Referring now to the conference of September 10th, in Mr. Anselm's office, what was said at that time by him with respect to the closed shop provision of your contract?

Mr. Walsh: I object, if the Examiner please, unless it is shown that there was a closed shop provision in the contract.

Mr. Swiren: This is cross-examination. He is able to  
675 tell us if there was not a closed shop provision.

Mr. Walsh: Probably you had better ask him whether there was or not.

Mr. Swiren: I will conduct my cross-examination my way, if Mr. Walsh does not mind.

Mr. Walsh: I hope so.

The Witness: I do not think there was a provision for a closed shop; I am not sure, but there was a clause in there, a check-off clause.

Q. (By Mr. Swiren) There was a check-off system clause?

A. There was a check-off clause, in there.

Q. Let us put that aside for the moment, and turn our attention to the closed shop provision.

Do you know, or do you not know whether there was a closed shop provision in the contract you presented as spokesman?

A. I did present it, but I don't remember whether there was that closed shop clause.

Q. You do not know whether it was in that contract or not?

A. I don't remember.

Trial Examiner Dudley: He testified he did not think there was such a clause. He testified he did not think there was a closed shop provision in it, but he did think there was a check-off provision.

Mr. Swiren: I want to get it straight, Mr. Ruck.

Q. (By Mr. Swiren) Is it your recollection that there was no closed shop provision, but that there was a check-off provision in the contract, is that right?

A. That is my recollection, yes.

Q. Then you did not discuss the closed shop possibility at that conference, is that right?

A. Well, I think there was some discussion about that. I say, if I remember right, why, Mr. Anselm looked upon that clause as a closed shop clause.

Q. That is, he—

A. There was some argument over that clause, I know that.

Q. That recognition clause you were talking about on direct examination, Mr. Anselm regarded as a closed shop clause, is that right?

A. No: the check-off clause.

Q. The check-off clause?

A. That was the way I took it, that the check-off clause was the one he objected to.

Q. Did he tell you he did not want a closed shop, and the company could not accept a closed shop arrangement?

A. Not that I remember. I remember him saying the company didn't want to recognize any outside union, or any union that had outside influences.

Mr. Swiren: I move that the latter part of the answer go out, and that the witness be instructed to confine himself to answering the questions.

677 Mr. Walsh: I believe that the latter part of the answer is pertinent.

Trial Examiner Dudley: Motion overruled.

Q. (By Mr. Swiren) You would not say, would you, Mr. Ruck, that Mr. Anselm did not tell the committee that the company would not accept a closed shop contract?

A. He said they would not recognize the union, an outside union.

Mr. Swiren: Now, will you read my question please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Do you understand my question?

A. No.

Q. You would not swear on your oath would you, Mr. Ruck, that at that conference Mr. Anselm did not say to you and the other members of the committee "The company will not enter into a closed shop agreement with the union"?

Mr. Walsh: I object to that question. It is double-barrelled.

Trial Examiner Dudley: Do you understand the question?

The Witness: I would not want to swear that, no.

Q. (By Mr. Swiren) He may have said that?

A. He may have said it.

Q. Do you recall whether Mr. Anselm told you that he thought the contract was very loosely drawn?

678 A. Yes. He said, I believe, if I remember right—his first words after he read it were, "Well, this is quite a document."

Q. What else, so far as you can recall, was contained in that contract that you presented, Mr. Ruck?

A. There was the request for recognition of lodge 66.

Q. Was there anything else in the contract?

A. There was, I believe, something about seniority rights.

Q. Was there anything else?

A. I believe there was a request for negotiations in regard to hours, wages, and conditions, and there was a check-off clause.

Trial Examiner Dudley: May I ask the attorneys if either one of them have copies of this agreement that was proposed?

Mr. Walsh: We both have copies; I have subpoenaed it, and I believe probably it will be produced. I think I should call for it at that time.

It should be produced, and it will speak for itself; let the contract speak for itself.

Mr. Swiren: Let me proceed with my cross-examination.

Mr. Walsh: I am calling for the contract at this time, in response to a subpoena.

Mr. Swiren: I ask to be permitted to continue with my cross-examination.

Trial Examiner Dudley: There is no use of asking the witness about the contents of a document, if you have the 679 document here, and can look at it and see what the contents are.

Mr. Swiren: It is his recollection with respect to that conference that I am asking about.

Mr. Walsh: I suggest that the document speak for itself.

Mr. Swiren: You opened the subject up, Mr. Walsh.

Mr. Walsh: I have also called for the contract, Mr. Swiren.

Trial Examiner Dudley: What is it you want to find out, Mr. Swiren? Do you want to find out what is in the document?

Mr. Swiren: No. I want to find out what happened at that conference.

Trial Examiner Dudley: What happened to what?

Mr. Swiren: I am trying to find out what happened at that conference; I want to complete the picture.

Trial Examiner Dudley: Suppose you develop that by conversations and discussions.

Mr. Swiren: These are just preliminary questions.

Trial Examiner Dudley: I do not see that you need to ask him about the contents of the document, when the document speaks for itself.

Mr. Swiren: If the Examiner will bear with me, I think that I will be able to show what I am trying to develop in just a few questions. It will take much less time to do that, than to have a long discussion about it.

Trial Examiner Dudley: Go ahead.

Q. (By Mr. Swiren) Did you discuss the matters of 680 hours and wages at that time?

A. I do not think so.



Q. You did not raise any question about hours and wages at that time?

A. No.

Q. Did you discuss working conditions at that time?

A. Well, I think there was a clause in there in regard to working conditions, but as I said before Mr. Anselm made the statement there was not anything in there that he didn't think he could eventually grant us, except union recognition.

Q. Did you construe that to mean he could grant you a check-off system?

A. No, because that was tied up with union recognition. If there was no union recognized, there would be no check-off system.

Mr. Swiren: Will you mark that document Respondent's Exhibit No. 4 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Respondent's Exhibit No. 4 for identification.)

Q. (By Mr. Swiren) I show you a document marked Respondent's Exhibit No. 4 for identification, and I will ask you if that is a copy of the original agreement presented by you to the company and Mr. Anselm on the 10th of September at the conference we have just been talking about?

A. As far as I can recognize it, it is a copy of the—

681 Q. Of the contract you presented to Mr. Anselm?

A. Well, I do not think it is the original, because if I remember right, the one I gave to Mr. Anselm had a cover on it.

Q. It had a back?

A. Yes.

Trial Examiner Dudley: Is that signed?

The Witness: No.

Mr. Swiren: No. I imagine if this had been signed, we would not be here today. There was no contract signed.

Trial Examiner Dudley: No; I mean, is it signed by the parties who proposed it?

Mr. Swiren: No. It just has blanks at the bottom.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) Referring to this Exhibit No. 4 for identification, that is Respondent's Exhibit No. 4 for identification, does it refresh your recollection with respect to the closed shop as a subject matter of the discussion at that conference?

A. No. I don't seem to recall any discussion on the closed shop.

Q. Look at section 6. Does that provision contain what you understand to be a closed shop provision?

A. Yes, that would be.

Q. You do not recall now whether that was discussed?

A. I do not recall any discussion on that.

682 Mr. Walsh: I wonder if counsel will read that provision into the record, so the record will indicate what section was under discussion, and exactly what the section was.

Mr. Swiren: I have identified the section.

Mr. Walsh: You have not yet offered it in evidence.

Trial Examiner Dudley: Do you intend to offer it in evidence?

Mr. Swiren: I do not know yet. They have called for it. I take it they want to offer it.

Q. (By Mr. Swiren) Referring again to the same section 6, the last sentence contains the provision you referred to as the check-off provision, does it not?

A. Yes.

Q. It is right there in the same paragraph, in the same section?

A. Yes.

Q. Did you say at that time that it was essential that the check-off system be adopted?

A. Well, I wouldn't say myself, no.

Q. You did discuss the check-off system, is that right?

A. Did we discuss it?

Q. Yes; you did, did you not?

A. With Mr. Anselm?

Q. Yes.

A. I just said I didn't recall any discussion on that.

683 Q. As I understood you before, you said you did not recall any discussion on the closed shop, but you did recall some discussion with respect to the check-off system.

A. Oh, yes. Mr. Anselm brought that up, and he said—now, come to think about it, I think that that was where it came up; that is where that discussion came up.

He said it would amount to a closed shop, and that if there was employees that did not want to belong to the union they would have to belong to the union.

Q. He said—

A. He said he did not think that check-off system would be fair at that time.

Q. And he said—

A. That is, as near as I can recall.

Q. Yes.

A. I can't recall the exact words.

Q. Is it your recollection that he said then that the company was not willing to compel any employee to pay dues to lodge 66 unless the employee wanted to voluntarily do so?

A. That was the way I took it, yes. That is the way I understood it.

Q. I take it that the same point of view was expressed with respect to membership in lodge 66? The company did not want to compel anybody to belong to lodge 66 unless the employee wanted voluntarily to belong to it, is that right?

684 A. There may have been something said about that; I don't recall.

Q. Was anything said about another meeting before you left that conference?

A. Another meeting with Mr. Anselm? I don't remember.

Q. Was anything said by you or the other members of the committee about withdrawing the demand for a closed shop or check-off system?

A. I don't think so, at that time. I believe there was another contract drawn up that eliminated that; I am not sure. I wouldn't say when it was drawn up.

Mr. Swiren: If the Examiner please, I move that that be stricken out, and that the witness be instructed to confine his answers to the questions I ask.

Trial Examiner Dudley: It may stand for what it is worth.

Q. (By Mr. Swiren.) At that specific meeting of September 10, you did not withdraw any of the provisions of the contract you submitted, did you?

A. No.

Q. You did not make any change?

A. No.

Q. Are you familiar in a general way with the solicitation of members for lodge 66?

A. Well, I think most of them were—

Q. Just answer that yes or no, whether you are or  
685 whether you are not familiar with it.

A. Whether I am familiar with it?

Q. Yes.

A. Yes.

Q. You personally solicited members?

A. No.

Q. You did not personally?

A. No.

Q. Did you hear discussions about the union among the employees?

A. Yes; I had discussions myself.

Q. You participated in some?

A. Yes.

Q. That was a very common subject of discussion during the fall of 1936 among the employees, was it not?

A. It was.

Q. Is that right?

A. Yes.

Q. I did not get your answer.

A. It was.

Q. Did you hear any such discussion throughout the plant during that period of time?

A. My work kept me in one part of the plant.

Q. In which department were you, Mr. Ruck?

A. Up in the machine shop, on the automatic screw machines.

686 Q. Did you hear that discussion in the machine shop?

A. Oh, yes; you would hear some.

Q. Two men would be standing next to each other at work, and the subject would come up and be discussed?

A. Yes.

Q. In the course of the discussion, the question of whether or not a man ought to join was sometimes discussed, was it not?

A. I presume so. I worked with my buddy. We worked together for years; that is what we talked about, so I imagine they did too?

Q. You assume the others did the same thing?

A. I assume that; I am not positive.

Q. Men from the maintenance department would come through your department from time to time, would they not?

A. Yes.

Q. There would be discussions with them on occasions as to the union, and union membership, and organization, and the like?

A. Well, I never had much discussion with them, because I was a member at that time, and they were members, so the only discussion there would be was "Well, are you going to the meeting tonight?" or something like that.

Q. Or "How is the membership drive going?"

A. Something on that order.

Q. Did you hear them talk to others in your department who were not members?

A. No. There was really only two of us in that department.

Q. Only two?

A. We were more or less kind of isolated, as far as being close was concerned.

Q. You had 100 per cent organization—

A. Yes.

Q. —among you two?

A. Yes.

Q. You said a few minutes ago that your larger committee met in the yard to elect a smaller committee to call on Mr. Anselm.

Did you refer to the company yard?

A. The company yard?

Q. Yes.

A. Yes.

Q. That is company property?

A. Yes.

Q. I take it you did not ask for permission from the company for the holding of that meeting, did you?

A. Not that I remember, no. It was done during the noon hour. That was just a meeting of the committee.

Q. About how many men were there?

A. About 15 I should judge; I don't just remember.

Q. As far as you recall, Mr. Ruck, you have told us everything that you can about what occurred at the meeting of September 10th?

A. Yes.

Q. You think you would remember it, if there were something of importance that you have not already testified to that occurred at that meeting, is that right?

A. I believe so.

Mr. Swiren: That is all.

*Redirect Examination.*

Q. (By Mr. Walsh.) You are not working in town at this time, are you?

A. At this time I am not working at all.

Q. I see.

A. I am not working at all.

Mr. Walsh: That will be all. You may step down.

Mr. Swiren: Just a moment; since that question has been raised, let me ask one more question.

*Recross Examination.*

Q. (By Mr. Swiren.) Did you work anywhere since the 17th of February, 1937?

A. Yes.

Q. Where?

A. I worked in Chicago, and at Libertyville. I got laid off last Saturday.

Q. At Libertyville?

A. At Libertyville.

689 Mr. Swiren: That is all.

Q. (By Mr. Walsh.) What were your weekly earnings, Mr. Ruck, during the time you were employed?

A. At Fansteel?

Q. At Fansteel. What were your average weekly earnings for the last two or three months before you were—

A. About the last month or six weeks it was around \$36 a week on the 40 hour basis.

Q. Were you working any overtime?

A. Sometimes we worked Saturdays, but not overtime during the night.

Q. I see. How much money have you earned at other employment since February 26th, 1937?

Mr. Swiren: That is objected to, if the Examiner please. I would like to be heard on that.

Trial Examiner Dudley: Mr. Swiren, how long do you think this argument is going to be?

Mr. Swiren: I am going to be very brief.

Trial Examiner Dudley: Proceed.

Mr. Swiren: Respondent's Exhibit No. 2 is a final decree of the Circuit Court of Lake County entitled "Fansteel Metallurgical Corporation versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America" and other defendants including Mr. Ruck.

The decree was entered in that case finding this man 690 was discharged from participating in the seizure and retention of buildings 3 and 5 of the respondent company. What has occurred since then as far as his earnings are concerned cannot be material.



That is the final adjudication between this party and the company.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: You may answer.

The Witness: Restate your question again.

Mr. Walsh: Please read the question, Mr. Reporter.

(The question was read.)

A. Well, I don't know the exact amount, but I do not think it is over \$75 or \$80.

Q. (By Mr. Walsh.) Will you during the course of the trial try to figure out just how much you have earned, and let me know?

A. Yes.

Q. If you find you have earned any different amount, I will put you back on the stand, and you can correct your answer.

A. All right.

Mr. Walsh: You may step down.

Trial Examiner Dudley: I would like to ask a few questions.

Mr. Walsh: Pardon me.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley.) During the conference of September 10th, 1936, did Mr. Anselm speaking for the company say that they would not recognize any union at all, or did he say only that they would not recognize an outside union?

A. An outside union.

Q. He said they would not recognize an outside union?

A. Or a union with outside influences.

Q. Did he say why he would not recognize a union?

A. I don't remember whether he said anything about that.

Q. Did he say that was the policy of the company?

A. Yes.

Q. Did he say whether or not he had discussed the matter with the president of the company or the directors, or any of the officers of the company?

A. I don't recall him saying anything about that.

Q. Did he say whether or not the company would be willing to recognize any other kind of a union?

A. Well, as far as I can recall he did say that what we should have was a good strong inside union.

Mr. Swiren: Read the answer please, Mr. Reporter. I could not hear it back here.

(The answer was read.)

Q. (By Trial Examiner Dudley.) Did he make any suggestions or offers to help organize such a union?

A. Not at that time, no.

Q. Did Mr. Anselm make any offers to the committee 692 on September 10th, as to contracts which the company would be willing to enter into?

A. No. As far as I recall, he had a few copies of an employees' representation plan, and he gave them to different members of the committee and told them to read it over and see what they thought about it.

Q. Did he say the company would be willing to enter into such a plan?

A. He didn't say so at that time.

Q. Did he say what kind of an agreement the company would be willing to enter into?

A. Not that I know of; not that I recall.

Q. Did he suggest meeting again with the committee to discuss the subject matter of your conference?

A. A meeting with him again?

Q. Yes. Did he suggest any additional or later meeting with the committee?

A. I don't remember that.

Q. About how long did the conference on September 10th last?

A. Well, I should judge about an hour, or something like that. I don't recall exactly.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren) Mr. Ruck, do you recall that Mr. Anselm said, "Come back again, whenever you want to, and as often as you want to"?

693 A. He always told us his office was open to us at any time; but I know, as far as I can recall all the meetings we had were kind of made a little bit in advance, so Mr. Anselm could suit his time.

Q. You remember that he said the same thing at that meeting, just before the close of it, on September 10th?

A. I don't remember whether he said that at that time. He has always said he was willing to meet with any of the employees.

Mr. Swiren: That is all.

Q. (By Trial Examiner Dudley) You had, I assume, one conference with him in the morning of that day, September

10th, and then a later conference in the afternoon of September 10th after you had had a meeting of the committee in the yard at noon, and had cut down the size of your committee?

Is that correct?

A. No.

Mr. Walsh: I believe the testimony was, your Honor, that at the time this person arranged the conference with Mr. Anselm, Mr. Anselm told this person that he only wanted a small committee.

Their negotiating committee consisted of 15 or 18 people, and he only wanted a small group.

Trial Examiner Dudley: I see.

Q. (By Trial Examiner Dudley) Then the meeting you held with Mr. Anselm was held after the meeting of the  
694 entire committee in the yard of the company at noon, is that correct?

A. Yes; it was held in the afternoon.

Q. Did Mr. Anselm at that conference say anything about the meeting that had been held in the company yard at noon?

A. No.

Trial Examiner Dudley: That is all I have.

Q. (By Mr. Swiren) Did you tell Mr. Anselm you had a meeting in the company yard at noon?

A. I don't remember whether there was anything said about it or not.

Q. You do not know whether Mr. Anselm even knew about the meeting?

A. I don't know that he did.

Mr. Swiren: That is all.

Trial Examiner Dudley: That is all. You may be excused. (Witness excused.)

Mr. Walsh: Meyer Adelman.

MEYER ADELMAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh) State your name, please.

A. My name is Meyer Adelman.

Q. Where do you live, Mr. Adelman?

A. I live in the Clayton Hotel, Waukegan, Illinois.

Q. You are presently confined to the county jail?

695 A. Yes, sir.

Q. You have appeared before the Examiner here in response to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. You appear of your own free will?

A. Yes, sir.

Mr. Walsh: Mr. Examiner, I would like to have you explain to Mr. Adelman his privilege under the Act, and ask him whether he claims it or not.

Trial Examiner Dudley: Mr. Adelman, I will inform you that in most courts of law witnesses do not have to give testimony which might be used to incriminate them, or which might be used to find them guilty of crimes, misdemeanors, or other offenses.

The National Labor Relations Act provides that witnesses in these hearings must give such testimony, but if they wish to claim the privilege, that they shall not be prosecuted or subjected to any penalty on account of any transaction on which they may be examined during the hearing before the Board.

Do you wish to claim such privilege?

A. I do wish to claim such privilege, sir.

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh) Mr. Adelman, what is your occupation?

A. I am field director for the Steel Workers Organizing Committee.

Q. Will you talk a little louder?

A. Yes, sir.

Q. How long have you been thus engaged?

A. Since last July.

Q. When did you first come to Waukegan?

A. Around July 5th or 6th.

Q. Were you instrumental in the course of your business in aiding in the organization of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Yes.

Q. Just tell the Examiner in your own words the way that lodge was organized.

A. Several employees—

Trial Examiner Dudley: Speak louder, please, Mr. Adelman; there are a lot of people here who want to hear you.

The Witness: Several employees of the Fansteel Metallurgical Corporation have come to me and asked me about the procedure of organizing a C. I. O. union within their plant.

I have talked with them, and told them all about our procedure and policy, and asked them if they were interested, to come with a larger committee, which they did at a future date.

I talked with the committee, and have explained to them our policy and our procedure, and they proceeded to organize, and I helped them.

697 Q. (By Mr. Walsh) Now, through what steps did you go in the organization of this lodge?

A. We distributed literature around the plant.

Q. Did you ask them to sign anything?

A. We furnished them with application blanks.

Mr. Walsh: Will you mark this, Mr. Reporter, Board's Exhibit No. 11 for identification please.

(The document referred to was thereupon marked Board's Exhibit No. 11 for identification.)

Q. (By Mr. Walsh) I hand you herewith what has been marked Board's Exhibit No. 11 for identification, Mr. Adelman, and I will ask you what that is.

A. This is an application blank for membership in the union.

Q. In the union?

A. Yes.

Q. The union to which that relates is the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. That is correct, sir.

Q. When these men were taken into the union, they signed an application like that, did they not?

A. Yes, sir, except that there were at the beginning a difference in color.

Q. There was no difference in substance?

A. No, sir.

Q. Or the form of the application?

698 A. No, sir.

Q. It was printed on a card of another color?

A. That is correct.

Mr. Walsh: All right. I will offer this in evidence, if your Honor please.

Mr. Swiren: We object to it if the Examiner please. We have been having this same problem ever since Mr. Walsh started putting his case in.

It seems to me that the honest, straightforward way to prove membership, and the authorizations, if there were authorizations, is to bring in the originals. They are in their possession and their control.

We have repeatedly asked for subpoenas to bring them into the hearing. It seems to me, with the hearing as wide open as it has been permitted to be, that there ought to be some effort made on the part of counsel for the Board to bring in the real records that these people have in their possession, and lay them before the Examiner, so we can all see what they are, instead of having to depend upon the biased, prejudiced recollections of paid organizers.

Trial Examiner Dudley: Objection overruled.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 11.)

Q. (By Mr. Walsh) You are paid, are you not, Mr. Adelman, for your work in organizing unions?

699 A. Yes, sir.

Q. That is the way you earn your living, is it not?

A. That is correct, sir. I am proud of it.

Q. There is nothing illegal about your calling, is there?

Mr. Swiren: That is objected to.

The Witness: No, sir. I am proud of my calling.

Mr. Swiren: That is objected to.

Mr. Walsh: There has been some insinuation that the hearing was not straightforward and honest.

Mr. Swiren: There was no insinuation. I say just what I mean. I do not have to insinuate.

Mr. Walsh: I hope you do not say what you mean, Mr. Swiren.

Mr. Swiren: I certainly do.

Mr. Walsh: Well now, let us get back to work.

Q. (By Mr. Walsh) Mr. Adelman, the members of this union selected the Amalgamated Association as the union with which they desired to affiliate, is that right?

A. Yes.

Mr. Swiren: That is objected to. When I object, I think the witness ought to be instructed to wait, and not answer. Unless this witness has personal knowledge of all these things, it seems to me he ought not to be permitted to guess on the witness stand.

Trial Examiner Dudley: I think, Mr. Walsh, the witness should be more definite—

Mr. Walsh: All right.

Trial Examiner Dudley (Continuing): —in relating what happened, rather than his conclusions.

Mr. Walsh: All right.

Q. (By Mr. Walsh) Now, Mr. Adelman—



Mr. Swiren: Do I understand that there has been a favorable ruling on that objection?

Trial Examiner Dudley: The answer is already in the record.

Mr. Swiren: I move that the answer be stricken out.

Trial Examiner Dudley: I suggest that it be supported by definite testimony.

Q. (By Mr. Walsh) Will you state just what the membership of the union did, individually or as a union, with reference to selecting the Amalgamated as their union?

Go through the organization steps for the purpose of the record.

A. They signed application cards for membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Q. Then what happened?

A. Then we decided to meet under the auspices of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and we elected temporary officers.

701 Then we applied for a charter, and our charter was granted. It was received, and their officers were installed in due form, and we proceeded to function as a bona fide lodge.

Q. That charter was given to lodge 66?

A. That is correct.

Q. Who actually delivered that charter to the lodge?

A. The charter was delivered to the lodge by mail.

Q. Do you recall when that was received?

A. Well, it was either the latter part of July, or the first part of August.

Q. That charter is issued by the National office of the Amalgamated, is it?

A. That is right.

Q. There are certain definite requirements for admission of lodges to the Amalgamated, are there not?

A. Correct.

Q. Will you state for the record just what those requirements are?

Mr. Swiren: I object. The constitution and by-laws ought to be brought in. So far as this record shows, this witness has no familiarity with this organization, and is not an officer of this organization. In any event, the records themselves are the best evidence.

Mr. Walsh: I think this witness is qualified to answer.

Q. (By Trial Examiner Dudley) Do you know what  
702 the various provisions, rules and so forth are, as laid  
down by the national office?

A. The provisions are—

Mr. Walsh: Just answer yes or no.

Q. (By Trial Examiner Dudley) Do you know what they  
are?

Mr. Walsh: Just answer yes or no; do you know?

The Witness: Sir?

Q. (By Mr. Walsh) Do you know what the provisions for  
admitting lodges to the Amalgamated are?

A. Yes.

Q. All right.

Mr. Swiren: I think the witness ought to be asked whether  
they are contained in any constitution, or by-laws, so we can  
find out where they are, or whether they are in any other  
instrument, such as minutes.

Q. (By Mr. Walsh) Will you state, Mr. Adelman, what  
the provisions are that relate to the admission of lodges into  
the Amalgamated.

Mr. Swiren: We object.

Trial Examiner Dudley: Objection overruled.

A. The provisions are that workers first sign application  
cards and duly organize themselves. Then a form is made  
out—

Q. (By Mr. Walsh) Just a minute.

A. Yes.

Q. With reference to this last statement, what do you  
703 mean by "duly organize themselves"?

A. When I say "duly organize themselves", I mean  
that they sign application blanks and have a semblance of or-  
ganization.

Q. A semblance of organization is what?

A. They begin to meet in groups.

Q. They have officers, or have trustees?

A. They form offices and they elect temporary officers.

Q. It follows the usual ordinary course followed by groups  
of that kind?

A. That is right. They meet and elect temporary officers,  
and then the names of these officers are subscribed in an ap-  
plication blank for a charter.

I signed the charter application. I forwarded that to my  
regional director, and my regional director sends that to the  
Steel Workers Organizing Committee, and they apply to the

Amalgamated Association of Iron, Steel and Tin Workers of North America; it is then granted, and mailed to the one designated in the application.

Q. That roughly covers the steps through which the group must go?

A. That is right.

Q. In order to obtain a charter?

A. That is correct.

Q. Such a charter was obtained and was delivered to this group?

704 A. Yes, sir.

Q. That having been done, it constitutes this group or lodge a member of that union?

A. Right, sir.

Q. Now, Mr. Adelman, after this group was organized did you assist them in attempting to bargain collectively with the Fansteel Company?

A. Yes, sir.

Mr. Swiren: That is objected to as calling for a conclusion. I think the witness ought to be directed to state the facts.

Mr. Walsh: All right.

Mr. Swiren: May I ask the Examiner—

Mr. Walsh: Just tell us—

Mr. Swiren: (Continuing) —to instruct the witness to withhold his answer when an objection is made until there has been a ruling.

The other day the witness was very slow in testifying, but now he is very fast.

Trial Examiner Dudley: The witness is so instructed, but the objection is overruled. He may answer.

The Witness: What was the question, please?

Mr. Walsh: Read the last question please, Mr. Reporter.

(The question was read.)

A. Yes.

705 Q. (By Mr. Walsh) Will you just tell us what you did, the steps through which you went; tell the whole story to the Examiner.

A. I met with the officers and the committee of the lodge, and the representatives of the various departments and went over their needs, grievances, and whatever they had in mind.

After analyzing their situation, we have drawn a contract which was a tentative instrument, to present to the company as a basis upon which to bargain collectively. In that contract there were mostly provisions for setting up committees; that

would become a substantial instrument through which set up the bargaining would be obtained.

It also called for certain standards of employment to be inaugurated, and certain working conditions to take place, and the whole thing was voted by the union, and it was submitted as a basis upon which to bargain collectively.

Mr. Swiren: I move that the last statement as to how it was submitted be stricken out. There has been testimony here as to what happened at the conference, by people who attended the conference.

If Mr. Adelman attended the conference, he ought to be permitted to say what occurred there; otherwise, it certainly adds nothing to the evidence.

Trial Examiner Dudley: The facts you point out, Mr. Swiren, are in the testimony. The Board and the Exam-  
706 iner in going over the testimony will note them and bear them in mind in evaluating the testimony.

This testimony will, nevertheless, be allowed to be introduced.

Mr. Walsh: Mr. Examiner, I believe I called for the contract that was submitted to the corporation on September 10th. I ask that the company produce it in response to a subpoena.

I understand they have the contract, and are willing to produce it. I would like to have it, and introduce it in evidence, or a copy of it.

Mr. Swiren: I have what one of the witnesses says is a copy. That is the only thing we can find.

Mr. Walsh: You do not have the original?

Mr. Swiren: We agree that is a copy.

Mr. Walsh: I assume it is a copy. I will put it in for what it is worth. You desire it to be introduced anyway, do you not?

Mr. Swiren: I do not care whether you put it in or not, Mr. Walsh.

Mr. Walsh: Thank you.

Mr. Swiren: You can try your own lawsuit. I would like leave, however, to withdraw it and make copies for our own use.

Trial Examiner Dudley: It is in fact not the original, but a copy of what was presented?

707 Mr. Swiren: I am quite certain it is.

Trial Examiner Dudley: That is not the original?

Mr. Swiren: No.

Trial Examiner Dudley: Do you know what happened to the original?

Mr. Swiren: No; we do not have it.

Trial Examiner Dudley: Could Mr. Anselm tell whether it is the original?

Mr. Swiren: A subsequent contract follows this in so many points of importance, that I am convinced there is no question about it.

Mr. Walsh: Mr. Reporter, will you mark this Board's Exhibit No. 12 for identification, please.

(The document referred to, previously marked Respondent's Exhibit No. 4 for identification was thereupon marked Board's Exhibit No. 12 for identification.)

Mr. Walsh: Mr. Examiner, I am only having this marked for identification at this time because Mr. Swiren wants to withdraw it and make copies.

Trial Examiner Dudley: Very well.

Q. (By Mr. Walsh) Mr. Adelman, I hand you what has been marked for identification Board's Exhibit No. 12, and I will ask you to examine that paper (handing document to witness).

Mr. Walsh: May I suggest that we take a short recess?

Trial Examiner Dudley: For how long, five minutes?

708 Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: Would five minutes be sufficient?

Mr. Walsh: Yes.

Trial Examiner Dudley: I will announce a five minute recess; we will reconvene at 11:15.

(Thereupon, a recess was taken, after which the hearing was resumed in the courtroom of the Circuit Court of Lake County.)

Trial Examiner Dudley: Let us reconvene, gentlemen; you may proceed.

Mr. Swiren: If the Examiner please, I desire to renew the application I have made at several other sessions. We have asked for subpoenas and subpoenas duces tecum. The testimony so far makes it perfectly clear—

Trial Examiner Dudley: Mr. Swiren—

Mr. Swiren: (Continuing) —that we cannot get the evidence that has been asked for—

Trial Examiner Dudley: Mr. Swiren—

Mr. Swiren: (Continuing) —that we think we ought to have.

**Trial Examiner Dudley:** Let me interrupt just a moment. For the record, can you not refer to your remarks of a similar nature on previous occasions?

**Mr. Swiren:** There have been a number of things that have occurred since I made the last application.

**Trial Examiner Dudley:** I might also direct your attention to the fact that when you get ready to introduce evidence, we will then see what steps should be taken in order that you may get proper action.

**Mr. Swiren:** We cannot cross examine these witnesses properly without these documents we have requested.

**Mr. Block:** The subpoenas are under the control of the Labor Board. If those records are under the control of the witnesses—they were under the control of the witnesses—they should be produced at the time when they will be of some assistance to the company here.

**Trial Examiner Dudley:** If you did subpoena them, you would not want to use them until you started to introduce testimony.

**Mr. Swiren:** We want to use them when we cross examine the witnesses.

**Mr. Block:** We want to use them in connection with the matters being testified to by the witnesses.

**Trial Examiner Dudley:** When you call your witnesses, you will want them then.

**Mr. Block:** No.

**Mr. Swiren:** Since the witness is testifying to matters that are contained in some records, we want to have the records and cross examine him on them to verify his testimony.

**Trial Examiner Dudley:** You could not use them anyway, if they were lying right here in the room, unless it was 710 through the courtesy of Mr. Walsh.

**Mr. Swiren:** We cannot properly cross examine him without those records.

**Mr. Block:** If we call for a document in any court, that document has to be produced within a reasonable length of time.

If counsel who calls for that document attempts to use it either for cross-examination, or to inform himself as to what he may want to cross examine about, that is proper, and that is the time when the document should be produced.

They should not say, "Well, now, we will let you have it later, in case you want to use it". In the meantime, you are deprived of the use of it in the examination of the witnesses.



**Trial Examiner Dudley:** We will not waste any more time on it.

**Mr. Swiren:** We object to proceeding without the issuance of subpoenas for the production of witnesses and records, particularly records, inasmuch as it becomes apparent from the testimony of these witnesses that they are essential for the proper examination of these witnesses by our counsel.

**Trial Examiner Dudley:** The objection is overruled; proceed.

**Mr. Block:** Is it necessary to take an exception each time?

**Mr. Walsh:** No; we stipulated as to that.

**Trial Examiner Dudley:** Proceed.

711 **Q. (By Mr. Walsh)** Mr. Adelman, I have handed you a document for your examination.

**A.** Yes.

**Q.** Have you examined the document?

**A.** I did, sir.

**Q.** Are you familiar with the contents of this instrument?

**A.** I am.

**Q.** Well, will you tell the Examiner what it is?

**A.** This is the basis upon—this is the instrument which we have submitted as a basis upon which to bargain collectively.

**Q.** Did you aid in the preparation of this instrument?

**A.** I did, sir.

**Q.** Were you present when it was presented to the company?

**A.** No.

**Q.** Now, Mr. Adelman, were you present at some of the conferences between the negotiating committee of lodge 66 and the officials of the Fansteel Corporation?

**A.** No.

**Q.** Did you ever attend a meeting between the officers of the company and the negotiating committee?

**A.** I came to attend a meeting with the company, but they did not meet.

**Q.** Will you tell the Examiner, directing your attention to September 21st, what happened on that day? Just tell the whole story in your own words.

712 **A.** The committee requested me to meet them at 1 o'clock, or a few minutes to 1 in front of the office of the Fansteel Metallurgical Corporation in the city of North Chicago. I complied with their wish, and met them.

We came in to the office—the committee—and a gentleman

by the name of Mr. Schultz met us, and wanted to know what we wanted. The spokesman said there was a date for 1 o'clock for the bargaining committee and their representatives, with Mr. Anselm, the then superintendent of the company, and that we were there for that purpose.

He invited us into the offices and told us to sit down. I believe I sat down. That is right; there was a chair there. I sat down, and we waited.

Shortly thereafter Mr. Anselm came in and looked about, and I stood up. The spokesman for the committee was brother Ed Ruck. He introduced me to Mr. Anselm, the then superintendent of the plant, and we shook hands, and Mr. Anselm at once got very hostile. He went into a rage.

Mr. Block: That is objected to.

Q. (By Mr. Walsh) Tell what he said.

Mr. Block: I object to that.

Q. (By Mr. Walsh) Tell what he said, and tell what he did.

A. He asked me for my calling card. I said that a committee of his employees was the best calling card I could have; that in my opinion that was a very essential and 713 bona fide calling card.

Then he said, "Why didn't you stop outside and leave a calling card?" I says, "I don't have any, sir—I came here with the committee ostensibly presuming that the information that I have had that a meeting would take place with the company was bona fide." I says, "What as we arguing about?"

"Well," he says, "I am not going to meet you," and he said, "I am not going to meet anybody with you."

"Well," I said, "Mr. Anselm," I said, "What is wrong here? It is a bona fide committee of the union. You gave the date for the meeting, and all of a sudden you don't want to meet." "Well," he says, "I will meet with a committee, but I am not meeting a committee of the union, and I am not meeting any outsiders."

"Well," I said, "Mr. Anselm, under the law they have a right to choose anyone. They so chose me as their representative. Besides, I was elected by the lodge." I says, "I am anxious to be helpful in bringing about a genuine relationship." He said, "Go on, get out. Get out." He opened the door, and said, "Get out. You have to get out. Get out. Get out. Get out."

"Well," I said, "then I must say I am awfully sorry, be-

cause I thought we would have a meeting here." I says, "I don't mind getting out, if you want to talk the thing over.

If you just want me to step out, and come back in again,"  
714 I says, "I will step out and wait, there, and let you talk it over." So I did. He said, "Get out, get out," and he kept shouting. I went out there, and sat in the outer office of the Fansteel Metallurgical Corporation, and in about five minutes one of the members of the committee came out and said, "There is no use, Meyer." He said, "The other boys ran out through the back door, and they wouldn't meet, so," he says, "everybody went back. There is no meeting going to take place. You might as well go home."

So I went out of the building, and went about my business.  
Mr. Walsh: You may inquire, Mr. Swiren.

*Cross-Examination.*

Q. (By Mr. Swiren) Did you go to the Fansteel plant prior to February 17th, 1937, at any time other than on the occasion of September 21st, about which you have just been testifying?

Just answer that yes or no.

A. Yes.

Q. How many times?

A. A number of times.

Q. Well, tell us how many.

A. A number of times.

Q. Was it 200?

A. I wouldn't recollect.

Q. Was it 5?

A. Oh, I will say perhaps about—maybe 25 times.

715 Q. 25?

A. About that.

Q. What buildings did you go to?

A. None of the buildings.

Q. Where did you go?

A. To the street in front of the buildings.

Q. What street?

A. The street in front of the buildings.

Q. What street?

A. The street in front of the buildings.

Q. (By Trial Examiner Dudley) Do you know the name of the street?

A. I do not, sir.

Q. (By Mr. Swiren) Were you along the right-of-way of the North Shore Railroad at all?

A. I was on the triangle between the tracks and the street, like that (indicating), so to speak.

Q. On the triangle between the tracks and the street?

A. Yes, and in the middle of the street.

Q. You were on the triangle between the tracks and the street?

A. And in the middle of the street.

Q. Where is that triangle? Is there a sidewalk there?

A. There is not exactly a sidewalk there. There is soft ground, there, sort of near the gates.

Q. Did you go near any of the buildings?

716 A. Well, I went on the sidewalks, yes.

Q. Did you go near any of the buildings of the plant?

A. Oh, it was near. It wasn't far.

Q. What is that?

A. It was near; it was near the buildings, yes.

Q. Buildings 3 and 5?

A. No.

Q. You did not go near buildings 3 or 5?

A. No.

Q. If I were to suggest to you that perhaps you stood on the steps of one of those buildings and conversed with some of the men, you would think that would not be correct, is that correct?

A. I would suggest that would not be correct.

Q. That is your best recollection?

A. That is right.

Q. Is your recollection better now than it was in this court room here the other day?

Mr. Walsh: I object to that as not being material or proper cross-examination.

Trial Examiner Dudley: I think, Mr. Swiren, such questions are out of order.

Q. (By Mr. Swiren) And you never went near any of the buildings of the Fansteel plant except as you might have been near then by being on the public sidewalk, is that right?

717 A. Some of the place there has not got sidewalks.

Q. You never went on the company property during that period, did you, except on September 21st to attend the meeting that you just have been talking about?

A. Not as I can recall.

Q. Are you certain?

A. I never measured what was company property over there. I was told not long ago that the company also owned the road down there. If they did, naturally in going to the station back and forth I had to go on company property.

Q. You do not know whether you have been on company property in connection with your activities on behalf of lodge 66, then, do you?

A. I am certain I was on it on the 21st.

Q. Apart from that date, you do not know?

A. I never give it a thought. I never stopped to think about it.

Q. You did not ask the company's permission to go upon its property for any purpose, did you?

A. I did not—

Q. You did, or you did not.

A. The company didn't want to deal with me.

Q. Answer the question yes or no.

A. I never asked for permission, no.

Q. Did you advise or consult with the officers of lodge 718 66 with respect to membership drives, and the solicitations of memberships?

A. Why, certainly.

Q. And you outlined various methods for soliciting memberships which you knew which were successful?

A. That is correct.

Q. Did you tell them under no circumstances must they carry on that solicitation in the homes of the employees?

A. No.

Q. Did you give them any other warnings?

A. Warnings?

Q. Yes, warnings.

A. I warned nobody.

Q. Did you from time to time see application blanks when they were signed?

A. Immediately when they were signed, they were brought to me.

Q. What did you do with them?

A. I took charge of them.

Q. And you kept them?

A. For a certain length of time.

Q. What did you do with them afterwards?

A. Whatever was required of me to do with them.

Mr. Swiren: I ask that the witness be instructed to answer the question.

719 Trial Examiner Dudley: I believe, Mr. Adelman, that you should answer the questions as fully as you can, because what the Examiner and the Board want to know is the whole story; we want to get a complete and fair picture of the facts.

The Witness: I forwarded them to our office.

Q. (By Mr. Swiren) Which office?

A. In Chicago.

Q. Which office?

A. The office—

Q. The office of the Steel Workers Organizing Committee?

A. The office of the regional director of the—

Q. The Steel Workers Organizing Committee?

A. —Steel Workers Organizing Committee, yes, sir.

Q. Do you know what happened to those cards after you forwarded them to that office?

A. No.

Q. Did the lodge keep any record of those cards?

A. Well—

Q. They did, or they did not, which?

A. I don't think they do.

Q. They did not keep any records of those?

A. They probably did. I am not exactly familiar with whether they did or not.

Q. They did not keep any dues records of their members either, did they?

720 A. Some dues,—

Q. Did they keep a record of the members to find out who was paying dues and who was not?

A. Well, dues was not compulsory—

Q. Did they keep a record?

A. I don't know.

Q. You do not know?

A. No.

Q. You have not any idea as to whether anybody kept a record in lodge 66 of the number of members, the members who signed, and whether they paid dues, or anything else, is that right?

A. I have a record of the names.

Q. You have a record of the names?

A. Yes.

Q. You also have a record of when they signed those applications?

A. I do not think I was so particular about those things.



Q. You did not care about that?

A. No. It wasn't necessary.

Q. Where are those records you are keeping?

A. My records?

Q. Yes.

A. They are in my office.

Q. In Waukegan?

A. (No answer.)

721 Q. In Waukegan?

A. I don't think my records are in Waukegan at the present time.

Q. Where are they? Where are they?

A. I just opened a new one up at Milwaukee.

Q. Your records are in Milwaukee?

A. That is right. That is my new office now.

Q. If you are directed by subpoena, by a subpoena of this Board to produce those records, will you do so?

A. Certainly.

Q. Will you voluntarily produce those records now?

Mr. Walsh: I object, your Honor.

Q. (By Trial Examiner Dudley) Mr. Adelman, do you have those records with you?

A. Not with me, sir.

Mr. Swiren: Will you arrange to get them?

Q. (By Trial Examiner Dudley) You are at this time in jail, or in the custody of the sheriff, as I understand it?

A. Yes, sir.

Trial Examiner Dudley: You see, Mr. Swiren, your question is answered. He obviously cannot produce them.

Q. (By Mr. Swiren) If we arrange for you to post a letter, or send a telegram, or use the telephone, somebody could get those records from your Milwaukee office, could they not?

A. My records—

722 Q. What is that? What is your answer?

A. I do not know whether they will accept my telephone orders or conversation.

Q. Are you willing to try it?

Mr. Walsh: I object, your Honor.

The Witness: I have not asked for any personal privileges.

Trial Examiner Dudley: Objection overruled.

The Witness: I have conducted myself the same as any other prisoner in the jail.

Q. (By Mr. Swiren) Are you willing to do it if the facilities are made available to you?

Trial Examiner Dudley: Mr. Swiren, let me make a statement here. Mr. Adelman, no person has to testify orally, or produce records voluntarily if he does not wish to do so.

Whether he wants to do so without being subpoenaed is entirely up to him. You are free to testify as to whether or not you are willing to bring in the records voluntarily without a subpoena, or whether you wish to have a subpoena served on you.

The Witness: I do not wish to bring them in voluntarily.

Q. (By Mr. Swiren) You refuse to bring them in voluntarily?

Trial Examiner Dudley: He answered the question, Mr. Swiren.

The Witness: I do not wish to.

Q. (By Mr. Swiren) During the time the members  
723 were being solicited, did you hear any complaints about the methods used to solicit members of lodge 66?

A. No. They were highly complimentary.

Q. Everything went along very smoothly?

A. Very nicely.

Q. Directing your attention to the 21st of September, who was in the office of Mr. Anselm when he walked in?

A. He walked in alone.

Q. Who was in the office when he walked in? You were there, were you not?

A. I was in the office.

Q. And almost immediately thereafter, this committee walked in, did it not?

A. No. I walked in with the committee.

Q. Mr. Anselm told you he was not accustomed to having people call on him without being announced, is that right?

A. No, he didn't.

Q. You were sitting in his personal office when he arrived, is that true?

A. I was requested to sit there by his secretary. She said, "Sit down, boys."

Q. Were you sitting in the office?

A. Yes.

Q. He asked you to leave, did he not? He said if you  
724 wanted to see him you were to go through the conventional channels like any other man who came to see him, is that right?

A. He didn't ask in the conventional way.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Was that answer you just gave the best answer you can give to that question?

A. Not right away; he didn't ask me that right away.

Q. Did he ask you that during the course of the time you were there?

A. He pushed me out. He didn't ask me to leave. He pushed me out.

Mr. Swiren: Read the original question again, please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Is that right, or is that not right?

A. He didn't ask me that way. I am testifying under oath. I am not going to answer a question which is leading the other way with an answer that will cause me to prejure myself.

Trial Examiner Dudley: Mr. Adelman.

The Witness: Yes, sir.

Q. (By Trial Examiner Dudley) Did Mr. Anselm ask you to leave?

A. He didn't ask me in a nice way.

Q. Did he ask you to leave?

A. Well, he pushed me out. Would you construe that 725 the same as asking to leave?

Q. Yes.

A. Then he asked me to leave.

Q. Did Mr. Anselm say that if you wanted to see him you should ask permission to see him in the conventional way?

A. No, he didn't say that.

Q. Did he use the expression, "conventional way"?

A. Not at all.

Trial Examiner Dudley: Is that what you wanted, Mr. Swiren?

The Witness: He just said, "Get out of here. Why didn't you leave a card in there. Where is your card?" That is what he said.

Q. (By Mr. Swiren) You want out then, is that right?

A. Of course I went out.

Q. Finally?

A. Yes, sir.

Q. He had to ask you a number of times, I take it, from your testimony?

A. That is right.

Q. Did you send your card in?

A. I didn't have—

Q. Do not make a speech. Tell me whether you did, yes or no.

A. I had no card.

726 Q. Did you send it in?

A. No. I had no card to send in.

Q. Did you go to the information desk, or the telephone operator in the lobby and say you wanted to see Mr. Anselm?

A. I came in with the committee.

Q. Do you understand my question?

A. I do, sir.

Mr. Swiren: Will you read that question, Mr. Reporter, so Mr. Adelman can remember it a little better?

(The question was read.)

Mr. Walsh: I object, your Honor.

Mr. Swiren: That question can be answered yes or no.

The Witness: The spokesman did.

Mr. Walsh: Just a minute. I object, if the Examiner please. The testimony of the witness on direct examination was that he had been advised that Mr. Anselm had arranged for an appointment to meet the committee at that time.

If the witness was so advised, obviously there was no reason to go through this peculiar form of obtaining admittance to the sanctum of Mr. Anselm.

Mr. Swiren: Of course, this "peculiar form" is what we ordinary civil people follow when we call on another human being.

The Witness: Oh, yes.

—Trial Examiner Dudley: Mr. Swiren—

727 Mr. Swiren: He can answer that very readily; either he did or he did not.

Trial Examiner Dudley: As I understood your question, you asked Mr. Adelman as to whether or not after he left the office of Mr. Anselm at Mr. Anselm's request, he then went—

Mr. Swiren: Yes; that is right.

Trial Examiner Dudley: (Continuing) —to the information desk or the reception desk and asked the person behind the desk if he might see Mr. Anselm?

Mr. Swiren: That is right.

Mr. Walsh: This is after he had been ordered out of Mr. Anselm's office?

Mr. Swiren: We passed the ordering out a second ago.

Mr. Walsh: Oh.

The Witness: Oh.

Mr. Swiren: We are making progress.

Mr. Walsh: I will withdraw my remarks. I thought you were referring to his going in to see Mr. Anselm the first time.

Q. (By Trial Examiner Dudley) Now, Mr. Adelman, did you go—

A. No.

Q. (Continuing) — after leaving his office, to the information desk?

A. No, I did not

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) Have you done so at any time since that time?

728 A. No, sir.

Q. Have you telephoned Mr. Anselm to ask for an appointment with him?

A. No, sir.

Q. At any time since that time?

A. No, sir.

Q. Did you write him any letters since that time?

A. No, sir.

Q. Were you at the Fansteel plant prior to the time the fence that surrounds most of the plant now was erected?

A. Yes, sure.

Q. You are familiar with the lines along which the fence now runs, are you not?

A. I beg your pardon?

Mr. Swiren: Read the question.

(The question was read.)

The Witness: I do not know what that means.

Q. (By Mr. Swiren) You know where the fence is, especially outside of buildings 3 and 5, do you not?

A. You mean, the whole fence around the plant? Is that what you mean?

Q. Yes.

A. Yes, sir.

Q. Prior to the time that fence was erected—

A. Yes.

729 Q. (Continuing) —were you ever on the ground that has now been taken within the fence?

A. No.

Q. Never?

A. No.

Q. You testified with respect to requirements for the issuance of a charter to a lodge of the Amalgamated Association of Iron, Steel and Tin Workers of North America, is that right?

A. Yes, sure.

Q. Does that association have a constitution?

A. Well now—

Q. I will withdraw the question. Is it a corporation?

A. No, sir.

Q. Is it a voluntary association?

A. Correct.

Q. Does it have any articles of association, or any constitution?

A. Lodge 66 has not.

Q. I am talking about the association, the Amalgamated Association.

A. The Amalgamated Association has, but lodge 66 has not.

Q. We will get to lodge 66. Let us take them one at a time.

A. Counsel, it is an integral part. It must be so explained. Otherwise, you will get mixed up.

Q. Let us take them one at a time.

730 A. I want you to know the facts.

Q. You just take it slowly, and then I will understand you.

A. O. K.

Q. It had a constitution; does it still have a constitution?

A. It hasn't any constitution. Lodge 66 has no constitution.

Q. I did not ask you about lodge 66. We will get to that a little later.

Let us talk about the Amalgamated Association.

A. I don't know anything about the Amalgamated Association.

Q. Nothing at all?

A. I know there is an Amalgamated Association, but I only know about this Amalgamated Association.

Q. What do you mean by "this"?

A. I know that the lodges that I help organize, those are the only lodges that I am concerned with. Outside of that, it is the Steelworkers Organizing Committee.



They set for the Amalgamated Association. My function does not cover that. That is somebody else's function.

Q. Never mind your function. Tell what you know, and what you do not know.

A. Yes.

Q. Look at Board's Exhibit No. 11.

A. Yes.

Q. That is an application for membership in the Amalgamated Association of Iron, Steel and Tin Workers of 731 North America.

Is lodge 66 mentioned there?

A. Through the Steelworkers Organizing Committee—

Q. Wait a minute. Is lodge 66 mentioned there?

A. No.

Q. Well now—

A. But the Steelworkers Organizing Committee is.

Q. The Amalgamated Association of Iron, Steel and Tin Workers of North America mentioned in that application—

A. Yes.

Q. —is the association I am referring to.

A. Yes.

Q. Does it have any constitution, or articles of association, or by-laws?

Mr. Walsh: I object unless the witness is asked whether or not he knows.

Mr. Swiren: This witness has not been reluctant to tell us how much he does not know.

Mr. Walsh: Just a moment.

Mr. Swiren: He is their agent on this job.

Mr. Walsh: He says that he does not know much about the Amalgamated. Let us find out how much he knows before you ask this question.

As I understand it, he never was in close contact with the Amalgamated.

Mr. Swiren: Let the witness testify.

732 Mr. Block: That is absolutely competent, in view of the fact you asked him on direct examination what the requirements were.

Mr. Walsh: I believe I asked him what the requirements for membership in the association were.

Mr. Block: That is right.

Mr. Swiren: Yes.

Mr. Block: Is it not perfectly proper to know whether

those requirements are recorded somewhere, or are written in some instrument?

Mr. Walsh: Let us find out if he knows.

Mr. Block: He gave you the requirements.

Mr. Walsh: Ask the witness what he knows about it. He will tell you all about it.

Mr. Swiren: I stand on my question. I ask that the witness be directed to answer.

Trial Examiner Dudley: Read the question.

The Witness: What do you want me to do with this, hold it? Do you want me to hold this?

Mr. Swiren: I want you to hold that, and then listen very carefully and try to tell the truth.

The Witness: Yes.

Mr. Walsh: I object to counsel's remarks to the witness.

Mr. Swiren: The witness asked for it, and he will get it.

Mr. Walsh: I think the witness is entitled to the protection of the Examiner.

Trial Examiner Dudley: I might suggest, Mr. Swiren, that I think you will get a lot more out of your witnesses if you do not arouse them to hostility, by your own apparent hostility.

Mr. Swiren: If the witness would answer—

Trial Examiner Dudley: Pardon me just a moment. I think if you asked your questions in a lower tone of voice without attempting to intimidate your witnesses, they would be much more willing to give you full answers.

I will ask you to so conduct yourself.

Mr. Swiren: We have had experience with this witness before.

Trial Examiner Dudley: I am not interested in the experience you have had with this witness. I am interested in this hearing that we are holding here.

Mr. Reporter, read the question, please.

(The question was read.)

Trial Examiner Dudley: Now, Mr. Adelman, let me ask you this:

Q. (By Trial Examiner Dudley) Do you know whether or not the Amalgamated Association—by such I refer to the national organization—has any constitution or by-laws?

A. Yes, sir, they have.

Trial Examiner Dudley: Now, answer the original question asked by Mr. Swiren. Mr. Reporter, read the question again, please.

(Question read)

The Witness: Do I understand by that, that counsel is referring to the national organization?

Trial Examiner Dudley: Counsel refers—

Mr. Swiren: I do not know whether it is the national, international or local organization.

The Witness: There is a difference.

Trial Examiner Dudley: Counsel is referring to the national organization of the Amalgamated Association, as opposed to your local lodge known as lodge No. 66.

Is that right?

Mr. Swiren: I am referring to—

The Witness: Mr. Examiner—

Mr. Swiren: I am referring to the association named in this card that the witness has talked about.

The Witness: Oh; well then, this has no constitution or by-laws.

Trial Examiner Dudley: May I see the card?

Mr. Swiren: Yes. (Handing document to Trial Examiner Dudley.)

The Witness: It is the Steelworkers Organizing Committee.

Trial Examiner Dudley: Mr. Adelman, let me ask one question.

The Witness: Yes.

735 Q. (By Trial Examiner Dudley) The Amalgamated Association of Iron, Steel and Tin Workers of North America is a different organization from the organization known as lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, is it not?

A. If I can explain in my own way, I probably would be able to explain it.

Q. All right.

A. The Steelworkers Organizing Committee has an understanding with the Amalgamated Association of Iron, Steel and Tin Workers of North America, whereby that national union has permitted the Steel Workers Organizing Committee to organize lodges.

Then when they organize lodges, they request the charter from the parent organization, which is the national union.

Mr. Walsh: That is the Amalgamated?

The Witness: The Amalgamated.

Mr. Walsh: Yes.

The Witness: The Amalgamated Association issues the

charter, and forthwith suspends the constitution and by-laws with reference to the newly organized lodges, and gives authority to the Steelworkers Organizing Committee to act as their national union until such time as the national convention will be held of all the new steel lodges that are being organized.

Then the full Amalgamated agrees to come in together 736 and abide by the mandate of that convention. That is the story.

Mr. Walsh: As I understand it—

Mr. Swiren: Let me finish my cross-examination. ✓

Mr. Walsh: Let us get this straight. You are pretty well mixed up on it.

Mr. Swiren: No, I am not mixed up.

Trial Examiner Dudley: May I suggest that Mr. Walsh get this straightened out.

Mr. Swiren: I would like to continue my own examination, if the Examiner please.

Trial Examiner Dudley: I will rule that Mr. Walsh may ask a question.

Mr. Walsh: Will the senator from Chicago yield?

Mr. Swiren: Not with a recalcitrant witness.

Trial Examiner Dudley: Proceed, gentlemen.

Q. (By Mr. Walsh) Did I understand, Mr. Adelman, that at the time these new lodges come into the Amalgamated, the constitution and by-laws of the Amalgamated do not apply to them?

A. No, sir. They are suspended by the Amalgamated when they issue the charter.

Q. The reason for that is the change in the type of organization is it not?

A. The reason for that is because they allow us to have jurisdiction of these lodges for the purpose of organizing 737 them and keeping them organized, and perfecting them.

Q. It will be some time under the rules of the Amalgamated before a convention for the purpose of changing and amending the constitution can be called, is that right?

A. That is correct sir.

Q. Until that convention is held, and until that convention acts upon what the new constitution will be,—

A. The Steelworkers Organizing Committee—

Q. (Continuing) —the Steelworkers Organizing Committee controls—

A. That is right.

Q. —the new lodges?

A. That is right. They are the parent body for the new lodges.

Mr. Block: Now, if the Examiner please—

Mr. Walsh: I will try to explain that.

Mr. Block: I am addressing my remarks to the Examiner. Please to not make these side remarks. I am addressing my remarks to the Examiner.

I object to this. If counsel is actually attempting to have this subject explained, he ought to permit the witness to explain it. He can ask any question he wants to concerning it, but he should ask a question rather than giving him the answer. In other words, it is leading and suggestive.

—We have no objection, if he wants to, to his clearing it  
738 up. You have ruled he has a right to clear it up.

Trial Examiner Dudley: I think what Mr. Walsh is trying to do is to get the facts. There is no reason why there should be any mystery or any particular controversy as to the matter of getting the facts.

Mr. Swiren: I quite agree with you on that; but if he wants to clear it, let him put questions to the witness and clear it up, instead of putting the answers to him.

Mr. Walsh: If the answer I put in his mouth is wrong, he will tell you about it.

Mr. Swiren: That is not the way to proceed.

Trial Examiner Dudley: Do you want to bring anything else out?

Mr. Walsh: No. I think that pretty clearly explains to these gentlemen what the situation is. I want them to know it, so they will not be wandering around in a fog.

Trial Examiner Dudley: Mr. Swiren; have you any additional questions?

Mr. Swiren: Yes.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) Does the Steelworkers Organizing Committee have any constitution, by-laws or articles of association?

A. I don't know.

Q. Does lodge 66 have any by-laws or governing regulations?

A. No, except Roberts' rules of order, and good common sense.

739 Q. Referring to the cards that were signed by various employees of the Fansteel Company that were delivered

over to you, was there any record made by any of the officers of lodge 66 from those cards before they were delivered to you?

A. That I could not say.

Q. Who turned those cards in to you?

A. Any of the people that worked there.

Q. They did not pass through the hands of the officers?

A. No.

Q. The officers of the lodge?

A. The cards came into my possession before there were officers, a lot of them.

Q. They are now in your Chicago office, is that right?

Mr. Walsh: Milwaukee.

Mr. Swiren: Or rather, your Milwaukee office; which?

The Witness: My Chicago office.

Q. (By Mr. Swiren) The records containing part of the information from the cards are now in your Milwaukee office?

A. That is correct.

Q. Can you tell us whether any of the officers of the lodge have any portion of the information?

A. Well—

Q. Do they have any portion of the information in their records?

A. I really don't know. To be very honest with you, 740 I don't really know.

Q. Was the attendance at these various meetings recorded by anybody?

A. They don't record attendance.

Q. You did not have any roll call

A. No, we didn't have no roll call. There was a roll call of the officers, probably, but not the membership.

Q. No dues were paid, as I understand it, by any of the members since the organization of lodge 66?

A. Some dues was paid. You see, we suspend the payment of dues during the different periods.

Q. Was it suspended during the entire period?

A. No; during different periods.

Q. Then it would be your impression, I take it, that there would be some record as to who paid dues, and who did not?

A. Well, every member has his card—

Q. I am talking about the lodge, the lodge itself.

A. Naturally there would be.

Q. Whose duty would it be to keep that record?

A. That would be the duty of the financial secretary, sir.



Q. Do you know whether he has that record, or those records with respect to lodge 66?

A. Well, I really don't know whether he has or not, because you realize lodge 66 has been through some catastrophe.

Q. Yes. I realize it, too.

741 A. Yes.

Q. Have you had any meetings of lodge 66 since February 26th, 1937?

A. What was the question again, please?

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. Why, yes, strike meetings.

Q. (By Mr. Swiren) How many meetings have you had, Mr. Adelman?

A. Lots of them, strike meetings.

Q. You attended those meetings?

A. At times.

Q. Did you hear any mention of those records with respect to the members, or with respect to dues or the non-payment of dues?

Did you hear any mention of that at those meetings?

A. Those meetings I attended—I wouldn't hear any of their proceedings, except when my time would come, I would simply give them a talk, and go about by business. It was just talk meetings, not business meetings.

Q. Are you an officer of lodge 66?

A. No.

Q. As these cards representing applications for membership reached you, did you turn them over to the secretary or any other officer of the lodge?

742 A. As these cards reached me, I would naturally keep them in rotation and go over them, and tell the officers sometimes that we have had so many cards more, and I would give them the names of the people who joined, and proceed with the cards to our Chicago office.

Is that what you want to know?

Q. Yes.

A. I want to cooperate with you.

Q. Did you show those cards to any of the officers?

A. Well, I probably would and I probably wouldn't. It would be immaterial.

Q. You would not, in the regular course of events?

A. It is not material.

Q. Just a moment. Let the Examiner decide that.

A. I mean, as far as I was concerned; I did not mean here. As far as I was concerned, it was not material whether the officers saw them or not.

Q. You kept them and did not turn them over to the officers then, is that correct?

A. Yes.

Mr. Swiren: That is all.

Trial Examiner Dudley: Are there any further questions? (No response.)

Trial Examiner Dudley: Just a moment, Mr. Adelman. I want to ask a few questions.

743 The Witness: Sure.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) I believe you testified that you were the one who sent into the Steel Organizing Committee the application for a charter?

A. Yes.

Q. You wrote that letter as organizing agent of the lodge, or in some such capacity?

A. I filled out a regular blank, a regular constituted form for the charter.

Q. You filled out—

A. A regular application.

Q. —an application blank?

A. That is right.

Q. Do you have copies of that in your records at either Chicago or Milwaukee?

A. I don't know whether I have. I don't know whether a copy of that would be in the Chicago office. There might be.

Q. Was the application signed by any of the employees of the company?

A. No. The application was signed by me.

Q. Did the application state that there were any employees of the company, whom you named, who desired to form a lodge?

A. No, sir. The application stated that the employees of the company are organized into a union, and submits the 744 names of the officers.

Then I certified that I so did that, that I organized the lodge, and duly constituted them into a lodge, and that they are now applying for a charter.

Q. I see. I would like to ask you a few questions regarding your meeting with Mr. Anselm on February 7th—no.

A. The 21st.

Mr. Walsh: September 21st.

Trial Examiner Dudley: Yes, September 21st, 1936.

Q. (By Trial Examiner Dudley) Did Mr. Anselm at that time say that he was opposed to the company forming unions—or the employees forming unions?

A. No.

Q. Did he say he was opposed to unions?

A. He said something like that.

Q. Did he say he would not negotiate or confer with an outside representative?

A. Oh, yes. He said that.

Q. That was the reason for his asking you to leave?

A. Yes, I guess so.

Trial Examiner Dudley: I have no further question. Has anyone else?

Mr. Swiren: Yes.

Q. (By Mr. Swiren) He did not tell you he was not accustomed to having people come into his office and wait 745 for him without being announced, did he?

A. (No answer.)

Q. He either did, or did not. I think that requires a yes or no direct answer.

Q. (By Trial Examiner Dudley) Did Mr. Anselm say he saw people only when they were announced by his secretary, or through the information desk?

A. I don't think so. I was announced to him. When he came in, I was announced to him. He didn't say that to me.

Q. Did the committee have an appointment?

A. Yes.

Q. The committee asked you to come in, is that right?

A. Certainly.

Q. To participate in the negotiations?

A. That is right.

Q. (By Mr. Swiren) Who told you there was an appointment?

A. Who told me there was an appointment?

Q. Yes.

A. A representative of the National Labor Relations Board.

Q. What was his name?

A. What was his name?

Q. Yes.

Mr. Walsh: I object to that as not being material.

The Witness: I don't remember.

Mr. Swiren: I cannot think of anything more important.

746 Trial Examiner Dudley: He may answer if he remembers, who it was.

The Witness: Who was it that told me? Several of them tried to help along in this thing. Who was that?

Q. (By Trial Examiner Dudley) Who invited you to join the committee?

A. I beg your pardon?

Q. Who invited you to join the committee on this occasion?

A. Why, the whole committee and the lodge. It was to be understood that I was to be with them all the time. It was an established fact.

It was the desire of the lodge.

Q. (By Mr. Swiren) Who expressed that desire to you?

A. I beg your pardon?

Q. Who expressed that desire to you?

A. Every member who handed me an application blank.

Q. Every member who handed you an application blank?

A. I say, when they had signed an application blank, they expressed that desire.

Q. They told you they wanted to meet Mr. Anselm?

A. The Steelworkers Organizing Committee—

Q. They asked to meet Mr. Anselm on the afternoon of September 21st, is that right?

A. No, not on that afternoon, no.

Q. Who asked you to meet on that afternoon?

747 A. It was arranged by—what is that fellow's name? Oh, yes. Mr. Disser; that is his name.

Q. He told you he had made an appointment for you—

A. Right.

Q. (Continuing) —to meet Mr. Anselm on the afternoon of the 21st at 1 o'clock?

A. Correct.

Q. When did he tell you that?

A. A day before.

Q. Where?

A. In my office, 108 South Genessee, if you please, room 217, in the presence of several of the boys.

Trial Examiner Dudley: May I ask who Mr. Disser is?

Mr. Walsh: He is from the Chicago office of the National Labor Relations Board, is that right?

The Witness: Yes.

Mr. Walsh: That is right.

Trial Examiner Dudley: Are there any other questions?

Mr. Swiren: That is all.

Mr. Walsh: That is all I have at this time.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Mr. Block has suggested an adjournment until 2 o'clock.

Mr. Block: I have a few things to do. We have been 748 in court quite regularly. I am merely suggesting that.

If you want to come back sooner, that is agreeable.

Mr. Walsh: Suppose we adjourn until 2 o'clock.

Trial Examiner Dudley: The hearing is adjourned. We will reconvene at 2 o'clock.

(Thereupon, at 12:10 o'clock, P. M., a recess was taken until 2 o'clock, P. M.)

*After Recess.*

(The hearing was resumed at 2 o'clock P. M., pursuant to the taking of recess.)

Trial Examiner Dudley: You may proceed, gentlemen.

Mr. Walsh: Mr. Kondrath.

JOHN A. KONDRATH, recalled as a witness on behalf of the National Labor Relations Board, testified further as follows:

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Kondrath, were you a member of the negotiating committee that called upon the company at various time to negotiate with them?

A. I was.

Q. Will you tell us about the meeting that you had with the company on the 10th of September?

A. On the 10th of September—well, on that particular morning I believe I went in and asked Mr. Anselm if we could have a meeting with the management.

Q. Yes.

749 A. He asked me to sit down. He said, "Well, I think you can", he says, "but how big of a committee have you got?"

I says, the lodge has a committee of 12 that they want to come in and talk with the management.

Mr. Swiren: Will you speak a little louder, Mr. Kondrath.

The Witness: Yes.

Mr. Swiren: A committee of how many was that?

The Witness: 12. They wasn't there. We just were talking about a committee of 12. Mr. Anselm said that a 12 piece committee was too large a committee. He says, "It will take a little bit too much time."

He wanted to know if we could cut that down to approximately three or four, or any smaller number. He wanted to know more about this union of ours, and I told him that I couldn't recite any of the stuff about the union because it is up to the committee to say.

So I promised him I will see what I can do about the committee, and he said, "Well, you go ahead and see the boys, and if they cut down on the committee, be back here at 1 o'clock." So, during the noon hour the boys gathered by the boiler house outside of the yard, near building 6, and they decided to cut the committee in half. Instead of 12, 6 would go in.

Immediately I went upstairs to the tool room and I got ahold of a telephone, and I called Mr. Anselm up. I told him

the committee has decided to let 6 members come in. Mr. 750 Anselm said, "Well, be sure that they are employed by the management five years or better." So for a minute I hesitated, to look over in my memory about the members, and I was positive they were all better than five years, or very near five years employees there. I replied, "Yes, they are all five years on that committee."

So, we went in and we were met by Mr. Anselm in his office.

Q. (By Mr. Walsh) Did you present at that time a proposed agreement to the company?

A. Yes.

Mr. Walsh: Where is that exhibit?

Mr. Swiren: I have that exhibit.

Mr. Walsh: Oh, yes.

Q. (By Mr. Walsh) I hand you this paper which has been marked for identification as Board's Exhibit No. 12, Mr. Kondrath. Will you look that over and tell me whether or not that paper contains the proposed contract that you submitted to Mr. Anselm?

A. Yes. This is it.

Q. Now, after you had presented this to Mr. Anselm, what did he say?



A. Well, after that was presented, there wasn't much of a discussion of anything, except he asked if he could take time off to read the contract. So we said, "Yes".

He read the contract, and after he had read the contract he took a little rest like, and he said that he could even do 751 better, but not in that form of a contract, meaning that type of contract with the Amalgamated Iron, Steel and Tin Workers Association.

Q. What did he say about that?

A. That the management could never see it; that is, it is an outside union.

Q. They would never see it—what did he mean by that? What did he say?

A. That they would never accept it as the collective bargaining agency in that particular plant.

Q. When he said that he had reference to the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Yes.

Q. Now, who was present at that meeting with Mr. Anselm representing the management, do you know?

A. Yes. Carl Swanson—

Q. No; I mean, who was there representing the company?

A. Oh, the company.

Q. Who represented the company?

A. No, there was nobody there except Mr. Anselm at that meeting.

Q. At that meeting?

A. At that meeting.

Q. Was Mr. Aitchison or Mr. Troxel at that meeting?

A. They were not. They were in another meeting, 752 but not this one.

Q. Not that meeting?

A. No.

Q. All right. Was there anything else done at this first meeting with Mr. Anselm?

A. Well, there was a little discussion. He asked mostly the other fellows one thing and another. As a matter of fact, he didn't ask me much.

Q. Yes.

A. There was lots of discussion in between the other members of the committee. He asked Angelo Galbavy how long he worked there, and he didn't remember him so well, and so forth.

Q. Yes.

A. In the meantime, there were some—if I remember right, there was some kind of union books or by-laws that existed at that time at the American Steel & Wire Company—

Q. Did he discuss that American Steel & Wire booklet with you at this meeting, or was that at another meeting?

A. Yes, I believe it was in this meeting.

Q. At this meeting, was it?

A. Yes.

Mr. Walsh: Will you mark this Board's Exhibit No. 13 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 13 for identification.)

753 Q. (By Mr. Walsh) Had the union empowered this committee to enter into bargaining relations with the company?

A. Yes, sir.

Q. Tell the Examiner just how that was done, just how the union gave this committee authority to bargain for them.

A. They were nominated and elected, to my memory.

Q. At a meeting of the union?

A. At a meeting of the union.

Q. I will hand you herewith a little booklet that has been marked as Board's Exhibit No. 13 for identification.

I will ask you how that came into the possession of the union?

A. That was brought in on this meeting by somebody; who, I didn't see, because the door only opened up just enough to hand it in.

There wasn't even enough there to go around, for all the members of the committee, so I myself didn't get any copy, but I have seen them on the desk.

Q. That was in Mr. Anselm's office?

A. Right.

Q. On the 10th day of September? Is that your recollection?

A. That is my recollection.

Q. Someone from outside Mr. Anselm's office handed it into the office?

A. Yes.

754 Q. Then did Mr. Anselm hand that booklet around?

A. Yes.

Q. What did he say to the men when he handed that around?

A. Well, he said that if we had—or rather, would like to have in mind such a thing as this shop representation plan, he would recommend that we go back to the plant and see what we can do about it; that is, let us talk it over among ourselves and see if we could not start a union like this, instead of the Amalgamated Association.

Q. That is, what he said was that the plan was in force at the American Steel & Wire Company plant here in Waukegan, is that right?

A. Yes.

Mr. Walsh: Mr. Examiner, I would like to offer this in evidence.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No.

Trial Examiner Dudley: It may be admitted as Board's Exhibit No. 13.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 13.)

Q. (By Mr. Walsh) Now, I believe the committee had a further meeting with the company on the 21st of September; were you on that committee?

A. Yes.

755 Q. Will you tell the Examiner just what happened at that meeting with Mr. Anselm, as near as you can recall; tell us who was on the committee, and just what happened.

A. On the 21st of what month?

Q. The 21st of September, 1936.

A. On the 21st I believe we had a changed contract, another contract modified much less than this. If I remember right, there was supposed to be a meeting arranged by the Labor Board man for us at 1 o'clock, and for this meeting the lodge had voted in Meyer Adelman as a representative, and also to be in the committee.

At that particular time we went in on the understanding that the meeting was called by the National Labor man for us at 1 o'clock. We met Mr. Meyer Adelman on the outside, and we walked into the office through the lobby.

As we came in to the secretary's office, Schultz told us to go right into Mr. Anselm's office and sit down, that Mr. Anselm was back out in the factory, and he would be back and see us.

We sat there a few minutes and Mr. Anselm did come. Mr. Ed Ruck was the spokesman. He introduced Mr. Meyer Adelman.

Mr. Anselm said, "I have nothing to do with this gentleman here. He is not on my payroll." And he says, "Therefore, I don't want to have any discussion with him. He better go out and present his card and wait out in the lobby, 756 and then maybe I will leave him in."

Well, Meyer Adelman told Mr. Anselm he had no calling cards, but that he thought that the committee that had brought him in there was better than any calling cards he could have.

Mr. Anselm got kind of upset and told him to leave, and get out. He says, "Get out of here. We don't want you", or words to that effect.

So then Mr. Meyer Adelman went out, and Mr. Anselm was very excited and angry, and wanted to know who brought him in. We said nobody particularly, except the committee.

Well, we asked Mr. Anselm if there was a date set by the government man there for us, which we understood that there was. He said not that he knew of, there was no such meeting. Then Mr. Carl Swanson apologized to Mr. Anselm and said that we were misinformed about the meeting. Then we went back to the plant.

Q. At that time did you leave with him a proposed contract?

A. I don't remember that, whether we did. It was so exciting I can't recall.

Q. I see. What if anything did Mr. Anselm say about recognizing an outside union on that day?

Mr. Swiren: That is objected to, if the Examiner please. He has exhausted this witness' recollection by direct questions. Now he is suggesting, and leading the witness by his statements.

If the witness has anything more to add, he ought to add it, and not Mr. Walsh.

757 Trial Examiner Dudley: I think it is proper to prompt the witness' memory by questions. Proceed.

Mr. Swiren: I think he ought to exhaust his memory first.

Mr. Walsh: I thought you said I had.

Mr. Swiren: You asked who was there, and what was said; he has told you everything that was said.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: Read the question, please.

(The question was read.)

A. Well, I was so excited, I don't really remember.

Mr. Walsh: All right.

Q. (By Mr. Walsh) Now, directing your attention to February 17th, 1937, did a committee from the lodge have a meeting with Mr. Anselm on that date?

A. Yes.

Q. Can you tell us who was on the committee?

A. Well, that was pretty nearly an 18 or 20 piece committee.

Q. Who made up that committee?

A. The lodge.

Q. How was it picked out?

A. It was nominated from the floor, and elected.

Q. Where did the various members of the committee work in the plant?

A. In various departments.

Q. Were all departments represented?

758 A. Practically.

Q. Just tell the examiner what happened on that day, at the meeting on the 17th.

A. Well, that morning at about 9 o'clock we all gathered into the office. We wanted to know if Mr. Anselm was in, and Mr. Luther replied that he wasn't; he said, "He is not, but he probably will be here any minute." And he said, "Just go over here close to his office, or in his office, and sit down. He will be around later on."

So we all sat down and waited for Mr. Anselm. Mr. Anselm came in shortly and wanted to know what it was all about, so the committee told him that we were the bargaining committee representative of the plant, and we would like to have union recognition; we would like to meet the management.

Mr. Anselm answered that he did not think that that was very much necessary, as the company does not want to recognize any outside union. But nevertheless there was a lot of discussion about why and why not, and we seen Mr. Aitchison come into the plant and he went upstairs to his office.

We asked Mr. Anselm to go up and see Mr. Aitchison, if he would come down and confer with the committee, and talk this thing over.

He went up, according to him, and he seen Mr. Aitchison. He came back and said, "Nothing doing. It stands as it is, everything." For a minute he thought, and then he says,  
759 "Well, if you all want to come back around about 2 o'clock this afternoon, maybe there will be a different story, a different attitude."

So we promised we would come back at 2 o'clock. We came back, and we all got into Mr. Anselm's office practically, and Mr. Anselm says, "It is still the same. We can't recognize an outside union. If you fellows want to call it as a shop committee, why, we will give you collective bargaining, but under the leadership of outsiders, and the Amalgamated Association of Iron, Steel and Tin Workers, we will not."

So then there was quite a discussion. One member of the committee said one thing, and the other said another thing, and it led up to quite almost an argument.

So, at last I asked Mr. Anselm—no. Mr. Anselm stated he does not know whether this is a real law of the land, as the Supreme Court had not ruled on it. Then I said, "But Mr. Anselm, isn't it a fact that unions in the United States have been recognized before, when there weren't any laws at all for labor?"

He says, "I will agree with you on that." Then some other members said something to him which I can't recall; some of the other members did.

Q. What occurred immediately following the meeting in the afternoon with Mr. Anselm?

A. Well, somebody—some other member of the committee had said something to Mr. Anselm, but the answer had come from Mr. Anselm that he has been managing working men for a number of years, a good many years, and there was never any time where there was any dispute that the men would walk out on him.

After that we adjourned, and we went to the plant.

Q. Had this committee received any instructions from the union before it went to meet the management?

A. They had instructions to ask for collective bargaining, and was powered by the lodge to do as they saw fit.

Q. After the conference with Mr. Anselm, what did the committee do?

A. The Committee met in one portion of the chemical building, and they decided unanimously that they would protest in two buildings for collective bargaining.

Mr. Walsh: All right. Mr. Swiren, do you have a copy of the contract presented on the 21st of September?

Mr. Swiren: There was none presented on the 21st.

Mr. Walsh: There was none presented?

Mr. Swiren: No. There was another contract presented prior to September 21st.

Mr. Walsh: Do you recall upon what date that was?



Mr. Swiren: Let me see if I have it.

Mr. Walsh: This does not need to be in the record.

Mr. Swiren: Here is a contract (handing document to counsel).

761 Mr. Walsh: Will you mark this Board's Exhibit No. 14 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 14 for identification.)

Mr. Walsh: Mark this one Board's Exhibit No. 15 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 15 for identification.)

Q. (By Mr. Walsh) I hand you a letter which has been marked for identification Board's Exhibit No. 15. I will ask you whether or not you have seen that copy, and how it came to your attention.

Trial Examiner Dudley: Is that Exhibit No. 15, or Exhibit No. 14?

Mr. Walsh: That is Exhibit 14, I believe.

Trial Examiner Dudley: You said "15".

Mr. Walsh: I should have said "14".

The Witness: Yes. We got this by mail.

Q. (By Mr. Walsh) This was received through the mail, is that right?

A. Through the mail.

Mr. Walsh: I offer this in evidence, if the Examiner please, as BOARD'S EXHIBIT NO. 14.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

762 Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 14.)

Q. (By Mr. Walsh) I hand you a paper which has been marked Board's Exhibit No. 15 for identification entitled "A plan of employe representation which has been pronounced successful in a large number of plants."

I will ask you if you have ever seen that before.

A. Yes:

Q. Where did you get that?

A. We got that in the factory.

Q. Was that delivered to each employee?

A. Each employee, as far as I know. I got one.

Q. You got one like that, did you?

A. Yes.

Mr. Walsh: I offer this in evidence, if the Examiner please, as BOARD'S EXHIBIT NO. 15.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 15.)

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren) Mr. Kondrath, at the meeting on 763 September 10th, do you recall what was said with respect to the check-off system and the provision of the contract relating to check-off?

A. I didn't get that.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. I don't remember if there was anything said about the check-off system.

Mr. Swiren: Speak louder. I did not hear your answer.

Q. (By Mr. Swiren) What is it you do not remember?

A. I don't remember if Mr.—somebody said anything about the check-off system.

Q. You do not know whether that was discussed at all?

A. I myself don't remember.

Q. What is that?

A. I myself don't remember. There was more members of the committee.

Q. Do you recall what was said about the closed shop provision of the contract? —

A. No, I don't.

Q. Do you recall, Mr. Anselm saying that the company would not require anyone working for the company to pay dues to the union unless they wanted to?

A. He said that it did not make any difference to him if the fellows did belong to other organizations, and still had this company representation; that they weren't against 764 employees belonging to an outside union, but as far as the company was concerned, they would not recognize that particular union.

Q. They would not require employees to join the union as a condition of keeping their jobs, is that not right?

A. Repeat the question.

Mr. Swiren: Read the question.

(The question was read.)

The Witness: Mr. Examiner—

Mr. Swiren: Speak up so we can hear you.

Trial Examiner Dudley: Speak so everybody can hear you.

The Witness: I would like to have some information from the Examiner. This question is a funny question. I don't understand it.

Mr. Swiren: Let me restate it, so you will understand it.

Q. (By Mr. Swiren) Did not Mr. Anselm say that anyone could join the union if they wanted to, but the company would not require all the employees to join the union—

A. Well, Mr. Anselm—

Q. Just a minute.

A. He said—

Q. Wait a minute, until I finish my question please.

A. All right.

Q. Did he not say that the company would not require or insist that any employee join the union and pay dues to the union, but that was a matter each employee must decide for himself?

765 A. Mr. Anselm said he wouldn't—the company wouldn't force anybody to join that union.

Q. Or pay dues to the union?

A. Or pay dues to the union.

Q. Yes.

A. Right.

Q. Did you then say that you would take out the check-off system provision, or the closed shop provision from your contract and go along without that, or did you just take your contract and go?

A. We discussed it, that we would probably take that out.

Q. You told him you would take it out?

A. We did, out of the other contract, didn't we?

Q. No. Did you tell him then that you would take it out?

A. I don't remember if I told him there or not, but anyway the contract was revised, and that check-off system was taken out.

Q. You are sure the check-off system was taken out of the revised contract?

A. Yes.

Q. You are as sure of that, as you are of all the other testimony—

A. Yes.

Q. Wait a minute.

A. All right.

766 Q. You are as sure of that as you are of all your other testimony regarding that meeting of September 10th?

A. Yes.

Q. You are just as sure?

A. Yes.

Q. But you are not sure as to whether anything was said about taking it out at that time?

A. No. I'm not sure of that.

Q. Now, directing your attention to the meeting on September 21st, you entered the lobby with Mr. Adelman, is that right?

A. Right.

Q. The lobby of the administration building?

A. Yes.

Q. There is an information desk or window in the lobby?

A. There is.

Q. Visitors coming up to see someone go to that information window, is that right?

A. That is right.

Q. You did not stop at that information window, did you?

A. No.

Q. You walked right through the door which leads to Mr. Schultz' office, and then into Mr. Anselm's office?

A. Correct.

Q. Did you tell Mr. Schultz you had an appointment with Mr. Anselm?

767 A. I didn't.

Q. Did somebody tell him that?

A. The spokesman did.

Q. He said, "We have an appointment at 1 o'clock with Mr. Anselm"?

A. Correct.

Q. What did he say then?

A. Mr. Schultz says, "Go right in, and sit down."

Q. Mr. Adelman at that time did not leave word at the information desk at all?

A. No.

Q. That he wanted to see Mr. Anselm?

A. No.

Mr. Walsh: I object to that. How would he know that?

Mr. Swiren: He was there.

Mr. Walsh: I think the testimony of the witness is that the committee did not stop there. How would he know what Mr. Adelman had done?

Trial Examiner Dudley: Your question was whether or not Mr. Adelman had stopped.

Mr. Swiren: That is correct. The witness testified he met Mr. Adelman outside, and escorted him into the inner office.

Q. (By Trial Examiner Dudley) Did Mr. Adelman stay with the committee as they went through the corridors to Mr. Schultz' office and then to Mr. Anselm's office?

768 A. Yes.

Q. Did Mr. Adelman stop at the information desk as far as you know?

A. Not that I know of.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) When Mr. Anselm came into the office, he told Mr. Adelman he would have to make an appointment to see him, did he not, if he wanted to see him?

A. Well, yes; he meant it.

Q. When you introduced him—

A. The spokesman introduced him.

Q. Yes. Then he asked how he got in, did he not?

A. Yes.

Q. Mr. Adelman said he walked in?

A. Mr. Adelman says "I was admitted by your secretary through the door."

Q. During the course of that conversation did Mr. Anselm say he did not have any appointment?

A. Yes.

Q. And that he had not known of any appointment at all?

A. No.

Q. Then he told Mr. Adelman that if he wanted to see him, he would have to proceed in the usual way and have himself announced through the information desk in the lobby, is that right?

769 A. He told him to present a card and wait out in the lobby until he is called.

Q. Mr. Adelman said, "Well, it doesn't make any difference. I am here anyhow", did he not?

A. No, he did not.

Q. What did he say?

A. He said he wanted Mr. Anselm's attention to realize the fact that he was brought in there by a committee, and he thought that was better than presenting a calling card.

Q. Mr. Anselm said that if he wanted to see him he would have to proceed in the usual way, and go to the window and have himself announced, is that right?

A. He told him about cards, calling cards.

Q. He told him he would have to go out, and be announced in the regular way if he wanted to come in and see him?

A. He told him, as soon as he saw he didn't have a card presented, "Where is your card? Where is your card? If you haven't got a card, go out and wait in the lobby and present a card."

Q. Mr. Adelman went out?

A. Correct.

Q. Did you go out with him?

A. No.

Q. Did you see him after that that afternoon?

A. No.

Q. By the way, was this conference on the 21st and 770 the conference on the 10th on company time?

A. I believe it was.

Q. Did you ask—

A. The management always said whenever we wanted to come over to the office, and not to hesitate. They said to just come right over, and they are willing to meet us at any time.

Q. You did not hesitate when you came around, did you?

A. Sometimes I went there and made an appointment. This particular time—

Q. This time you did not hesitate, did you?

A. Now, just a minute. Wait a minute. This time that was made by a Labor Board man. We were advised that a meeting had been arranged with Mr. Anselm, and that we were to go in at 1 o'clock and meet him.

Q. Who advised you?

A. A member of the Labor Board conciliator's—

Q. He told you personally?

A. Personally.

Q. What was his name?

A. I forget what his name was.

Q. Was it Mr. Disser? His name has been mentioned here this morning.

A. Well, yes, I believe so.

Q. Are you sure of that?

A. I believe—

771 Q. Are you sure it was Mr. Disser?



A. Yes.

Q. Where did he tell it to you?

A. He told me in Waukegan.

Q. He is the man who re-wrote your contract for you, is that right?

A. He didn't re-write it.

Q. He did not have anything to do with re-writing it?

A. Not re-writing it, no.

Q. Did he have anything to do with correcting it, or changing it?

A. He advised what he thought Mr. Anselm probably would submit to.

Q. You followed his advice?

A. Part of it.

Q. He suggested changes in the language?

A. Not necessarily.

Q. Well, did he?

A. Well, probably, words.

Q. Then after your meeting of September 21st, you received a letter addressed to the employees of the company which has been offered and received in evidence as Board's Exhibit No. 14, is that right?

A. Yes. I don't remember the date.

Q. Will you refer to that letter, so that your recollection may be refreshed. That letter states the labor policy of the company, does it not?

A. Yes.

Q. Is that right?

A. The labor policy?

Mr. Walsh: I object, unless there is some information here to indicate on behalf of the company that this is a complete and full statement of the labor policy of the company.

I do not know how this man, an employee, would have information as to whether that was all of the labor policy.

Mr. Swiren: Whatever he does not know, he can tell us.

Mr. Walsh: I think the letter speaks for itself.

Trial Examiner Dudley: I think, Mr. Swiren, that the letter speaks for itself, as to the contents of it.

Mr. Swiren: This is just a preliminary question. I want to proceed further.

Trial Examiner Dudley: Proceed; see what you can develop.

Q. (By Mr. Swiren) You understood that was a state-

ment of the company's policy with respect to its employees, did you not?

A. You mean, as individuals, here?

Q. With respect to all of its employees.

A. Yes.

Q. That letter dealt with all of the matters raised by your drafts of contract with respect to hours of work, pay-  
773 ment for overtime, Saturday and Sunday work, seniority, improvement in machinery, and improvement in working conditions, is that right?

A. It did deal, but it did not—

Q. Now, I am not asking you what it did not do. Tell me whether it did with all of those things to the extent they were raised by the contracts you submitted to the management.

A. Repeat that question again.

Mr. Swiren: Read the question.

(The question was read.)

A. That letter?

Mr. Swiren: Yes.

Mr. Walsh: I object, if the Examiner please, because a comparison of the contract and the letter would indicate that better than anything the witness could say.

Trial Examiner Dudley: I think the contract and the letter are certainly the best evidence, but if Mr. Kondrath knows whether or not this letter deals with all of the points presented by the contracts, he may so state.

The Witness: Let me read some of these. It has been so long ago since I have read it, that I can't remember everything.

Mr. Swiren: If the Examiner wants the contract that has been offered in connection with this, here it is.

The Witness: Mr. Examiner, as far as I understand this letter, one time somewhere back in July—

774 Mr. Swiren: Just a moment. This question can be answered very directly, without any speeches.

The Witness: I can't answer, unless I go back to that history; I won't answer you otherwise.

Mr. Swiren: I think he ought to answer the question.

Trial Examiner Dudley: I think it is a rather complicated question, involving a comparison of the two documents.

Mr. Swiren: Let me split it up.

Trial Examiner Dudley: That is something you and I can do better than he can.

Mr. Swiren: I will split it up.

The Witness: I didn't go to law school, or high school.

Mr. Swiren: You are a pretty good musician, though, are you not, John?

The Witness: That is all right. I am a musician. Can you read music?

Mr. Swiren: Yes.

The Witness: Then I will go and play with you.

Mr. Swiren: You may do that.

The Witness: That is all right.

Mr. Walsh: If the Examiner please—

Trial Examiner Dudley: What was the question?

Mr. Swiren: Let me break it up.

Trial Examiner Dudley: Proceed.

775 Q. (By Mr. Swiren) With respect to the matter of improvements in machinery, safeguards for comfort, health and safety, and other working conditions, the latter announced that the company will do all of the things requested by you during your conference on the 10th of September, is that right?

A. We had it in the contract, so they had to answer it.

Q. They did say they would do that?

A. Sure.

Q. They would do it all?

A. They would do it all except recognize the union.

Q. They agreed to everything with respect to the—

A. Contract.

Q. (Continuing) —working conditions, and safeguards for safety, health and comfort?

A. Yes.

Q. And everything with respect to the 40 hour week, and time and a half for overtime; that had been going on before that anyhow, had it not?

A. (No answer)

Mr. Swiren: He nodded his head indicating "Yes."

Q. (By Mr. Swiren) The same is true with respect to seniority?

A. Not that I know of, seniority.

Q. They covered their—the company's—position on the subject of seniority, is that right?

776 A. (No answer)

Q. Look at the letter.

Trial Examiner Dudley: Mr. Swiren, if you are going to merely ask him what the letter contains—

Mr. Swiren: No, I am not.

**Trial Examiner Dudley:** (Continuing) —I will overrule you, because the letter is perfectly good evidence of what it says.

**Mr. Swiren:** I am trying to cover the question of how much of the demands were actually granted, and what he understood about that.

**Trial Examiner Dudley:** I will exclude questions which ask for the contents of the agreement or the contents of the letter, or a comparison between the contents of the two.

If you want to ask him about his understanding concerning these documents at that time—

**Mr. Swiren:** I think we have, your Honor.

**Trial Examiner Dudley:** (Continuing) —that might be permissible.

**Q.** (By Mr. Swiren) I take it then it is your understanding that this letter granted everything you asked for in your contract except recognition?

**A.** Yes.

**Q.** Is that right?

**A.** Yes.

777 **Mr. Walsh:** I object to that.

**Trial Examiner Dudley:** I will overrule the objection.

**Mr. Walsh:** I move that the answer be stricken out.

**Q.** (By Mr. Swiren) Now, referring to the meeting on September 17th at Mr. Anselm's office, that was arranged by appointment, was it?

**A.** No.

**Q.** You were waiting for him when he came in in the morning?

**A.** Just a minute.

**Q.** Is that right?

**A.** Just a minute.

**Trial Examiner Dudley:** Let me inquire: did you say "February 15th"?

**Mr. Swiren:** I said "February 17th."

**Trial Examiner Dudley:** Very well; proceed.

**The Witness:** I did arrange for that meeting in a way, but I didn't find Mr. Anselm in his office. I met him in another—in the experimental laboratory, and I had talked to him, and he said to me that any time the committee wants to come over, to come on over.

**Q.** (By Mr. Swiren) You took that as an invitation to come over on the morning of the 17th, and you were waiting for him when he arrived?

A. That is correct.

Q. That committee was empowered to bargain collectively for the union, was it?

778 A. Yes.

Q. Who empowered it?

A. The lodge.

Q. When was that meeting held?

A. That meeting was held—well, it was held a night or so before.

Q. Who was present at that meeting when the committee was authorized?

A. Who was what?

Q. Who was present? Who was at the meeting?

A. The lodge.

Q. Only the members of the lodge?

A. Yes.

Q. Nobody else?

A. Oh, yes.

Q. Who else was there?

A. Well, Meyer Adelman was there. I guess that is what you want to know.

Q. I want to know everybody who was there.

Mr. Walsh: I object.

The Witness: I don't know everybody.

Mr. Walsh: I object to that as not being material.

Q. (By Mr. Swiren) How many men were there? How many women were there, who were not members of the lodge?

779 A. There were, I would judge, in the neighborhood of—between 85 and 90 or probably better, I don't know.

Q. That is, a total of that many men and women?

A. Yes.

Q. There were some women present, were there not?

A. Yes.

Q. Did that meeting authorize your committee to take any action if it did not succeed in getting your requests granted?

A. It did authorize the committee.

Q. To do what?

A. It gave the committee full power to act as it sees fit.

Q. Without limitation?

A. No limitations.

Q. Was there a strike vote taken?

A. Where?

Q. At that meeting of the union?

A. No.

Q. Was there a vote taken among the members of the union before the 17th?

A. What the lodge voted was the power of the committee to go and see the management for collective bargaining, and recognition of the union, and to do as they saw fit, if they didn't.

Q. That was the only authorization you had?

A. As far as I know.

Q. Were there minutes kept of that meeting?

780 A. Yes.

Q. Who has those minutes?

A. The corresponding secretary must have them.

Q. Who is corresponding secretary?

A. Edward Buck.

Q. He testified he resigned, or was replaced two months ago. Did you know about that?

A. No, I didn't.

Q. As president, you assume he is corresponding secretary?

A. Yes.

Q. Has he been keeping minutes of the meetings recently?

A. Not recently.

Q. Who has been keeping minutes?

A. Well, we haven't had hardly any meetings lately.

Q. Who kept the minutes of the last meeting?

A. One of the members was asked to keep the minutes.

Q. Who was that?

A. Roy Brown.

Q. Roy Brown?

A. Yes.

Q. When Mr. Anselm came into his office, your committee then walked in behind him, is that it?

A. No. He asked us to come in.

Q. He asked you to come in, and you did?

A. Yes.

781 Q. He told you the company's policy had not changed, is that correct?

A. That is correct.

Q. He told you that they had set out their policy in a letter to all employees, and there was no change in that policy?

A. He didn't mention anything about the letter.

Q. Are you sure of that?



A. Pretty sure.

Q. You would not say definitely it was not mentioned would you?

A. I don't remember it being mentioned, about the letter.

Q. Then Mr. Anselm went upstairs to see Mr. Aitchison at somebody's suggestion?

A. Yes.

Q. He came back after he had gone upstairs, and said, "No, there is no change in the company's policy"?

A. No, and that Mr. Aitchison will not come down and meet with us.

Q. Then after your afternoon session, you went out in the chemical building and held a meeting, is that right?

A. That is right.

Q. Whose permission did you get for the use of the chemical building for that meeting?

A. Nobody's. We were only in there for two minutes.

Q. But you held your meeting there and did not ask anybody whether you could use it, or not?

782 A. How long after that meeting did you occupy buildings 3 and 5?

Mr. Walsh: I object to that as not being material.

Trial Examiner Dudley: Objection overruled.

The Witness: What was the question?

Mr. Swiren: Read it.

(The question was read.)

A. Until the 26th day of February.

Mr. Swiren: No.

Q. (By Mr. Swiren) How long after you left Mr. Anselm's office—withdraw that.

What time thereafter did you take over buildings 3 and 5, what hour of the day?

A. Around 2:30.

Q. About 2:30?

A. Yes.

Q. Was the decision to occupy buildings 3 and 5 made by your committee in its meeting in the chemical building?

A. It was.

Q. Then members of the committee spread through the plant to advise some of the others, is that right?

A. That is right.

Q. And to tell the foreman and the men who were not in your group to leave the plant, is that right?

783 A. I don't remember about the foremen.

Q. You remember that the group went and told the foremen to leave the plant?

A. I don't remember telling the foremen to leave the plant.

Q. You do not remember telling anyone, or hearing any of the foremen told to leave the plant? You do not remember someone saying, "We have shut down the plant. There will be no more work here"?

A. I don't remember.

Q. Well, where did you go after you left the chemical building?

A. I went upstairs.

Q. Where?

A. Upstairs in the tool room.

Q. Of what building?

A. Building 3.

Q. You went up into what floor?

A. The second floor.

Q. The second floor?

A. Yes.

Q. What departments are on the second floor?

A. There is the tool room, the machine shop, and tantalum fabricating department.

Q. Did you see any of the foremen on that floor?

A. Yes.

784 Q. Who did you see?

A. I seen Jack Wells.

Q. Jack who?

A. Jack Wells.

Q. Did you see anyone else?

A. No.

Q. No one else?

A. I have seen fellows there, members.

Q. No other foremen?

A. Not that I can recall.

Q. You did not see Mr. Chisholm at all, did you?

A. I?

Q. Yes, you. Did you say "No"?

A. No.

Q. Is that your answer?

A. Yes.

Q. Did you see any of your committee men or other associates shut off the power?

A. No, I didn't.

Q. What did you do when you got up to the second floor of building 3?

A. Well, when I got up there, the members said, "What is the answer"?

Q. What members?

A. The members of the union that was in the department.

785 Q. Who were those men?

A. Well, they were, some of them, on the committee.

Q. Well, who were they? Tell us their names.

A. Well, there was Garriss, Devine and Silason. That is about all in that department.

Q. Then what did you do?

A. I said, the committee decided to protest, because they wouldn't recognize the union, and they didn't want to give us collective bargaining.

Q. Did you tell them what you meant by "protest"?

A. Certainly they knew it.

Q. What did you tell them?

A. That is all I did tell them.

Q. Did you use the word "protest" to them?

A. Yes.

Q. Nobody asked you what that meant?

A. Not that I know of.

Q. Nobody asked what you were going to do, and you did not tell them what you were going to do, is that right?

You say "No"? I did not hear your answer.

A. No.

Q. You did not explain what action you were going to take with respect to that protest, did you?

A. Well, they said, "Well, what shall we do?" Some says, "Well, we will sit by the machines." The others  
786 said, "We will sit down." Then everybody started going back and forth, and everybody was discussing something.

I didn't even get in on half of the discussions.

Q. Well, you told them, did you not, that the committee had decided in the chemical building meeting to take over buildings 3 and 5?

A. That is all right.

Q. Wait a minute.

A. There was three different departments up there, and there was people walking back and forth wanting to know what was going on, and everything was all excitement.

Mr. Swiren: Read the question please. Let us not get any excitement here.

The Witness: We might have some.

Mr. Swiren: Let us not have any excitement. Read the question.

(The question was read.)

Q. (By Mr. Swiren) Will you answer that?

A. I did.

Q. Did you tell them that?

A. I did.

Q. Then what did you do?

A. I didn't do nothing.

Q. You just stayed right at that point the rest of the day?

787 A. Just about.

Q. That was about 2:30 in the afternoon?

A. Yes.

Q. When were the doors barricaded?

A. I don't know. I wasn't down there.

Mr. Walsh: I object.

Q. (By Mr. Swiren) You did not go down?

Mr. Walsh: I object.

Trial Examiner Dudley: What is the ground of your objection?

Mr. Walsh: I object on the ground there is no testimony here that the doors were barricaded.

Mr. Swiren: This is cross examination.

Trial Examiner Dudley: Can you not ask him, Mr. Swiren, whether the doors were barricaded, and then when? That is the usual procedure.

Q. (By Mr. Swiren) Were the doors open, or were they barricaded in the afternoon and evening of the 17th?

A. I don't know. I was most of the time upstairs.

Q. As president of lodge 66, you were interested in what was going on, were you not, Mr. Kondrath?

A. Do you want to know why? If you want to know why, I will tell you.

Q. No. Answer the question.

A. Previous to that I was in the office, and worked  
788 in the office. I wasn't allowed to go into that plant until just recently before that strike.

So, my interest was very limited, because I didn't know just what was going on in the shop as well as the rest of the fellows did.

Q. So you were not interested in what was going on in the building? You were not interested in what was happening in the building?

A. I wasn't very much interested, no.

Q. You were not interested enough to go down and take a look for yourself?

A. No, not until later.

Q. When did you go down, and what did you see?

A. Probably in the evening, towards dark.

Q. And were the doors open, or were they barricaded?

A. At that time they were.

Q. They were open?

A. Open.

Q. What was happening then?

A. Mr. Luther was coming in, and he wanted to know where Carl Swanson was, and so on.

Q. Was Carl Swanson in charge in that building?

A. I don't know exactly whether he was in charge there or not.

Q. He seemed to be, did he not?

789 A. Well, he went around to everybody asking for Carl, and asking for Carl, but there was nobody especially in charge.

Q. Did they ask him what to do, and what ought to be done?

A. No. There was a committee met there, and Mr. Luther asked whether the doctors in the laboratory could come back and do some work, or some testing.

Q. What did Swanson say?

A. Well, yes, they could come back and work; it was not necessarily Swanson. There was a committee there that instructed them that was all right.

Q. Then how long did you stay on in building 3?

A. I stayed upstairs practically until the first gas attack.

Q. When did you leave the building?

A. The 26th; the last gas attack.

Q. You stayed in the building from the 17th of February until the morning of the 26th of February, is that right?

A. I did.

Q. Were the machines running during that period?

A. No.

Q. Was there any production?

A. No.

Q. From the 18th through the 26th were any members of the management admitted to those buildings?

A. They didn't ask for admission to collective bargaining.

Mr. Swiren: Read the question, Mr. Reporter, please.

790 (The question was read.)

Mr. Walsh: I object, if your Honor please, as not being material to the issues involved in this case.

Trial Examiner Dudley. The objection is overruled. I will let him go into it, and see what is developed.

Q. (By Mr. Swiren) Were they all admitted?

A. On the 18th?

Q. From the 18th to the 26th.

A. Not inside of the building.

Q. And the sheriff and his deputies were not admitted during that period either, were they?

A. I don't know. I wasn't around the windows or the doors much.

Q. You never saw the sheriff in those buildings during that period, did you?

A. No, I didn't.

Q. You did not see his deputies in there?

A. I didn't.

Q. Were the foremen in the buildings then?

A. No.

Q. During that period?

A. No.

Q. Are there any women employed in building 3, regularly?

A. Yes.

Q. During normal operations?

791 A. Yes.

Q. And in building 5?

A. Yes.

Q. Were there any women in the building during the period from the 18th to the 26th of February?

A. From the 18th to the 26th?

Q. Yes.

A. No.

Q. What were you doing in the buildings during that period, Mr. Kondrath?

A. Well, part of the time we stood up, and when we got tired of standing up, we sat down.

Q. Did you eat in those buildings?

A. Yes.

Q. Did you sleep in the buildings?

A. We did.



Q. How many men were there in building 3?

A. In building 3, approximately about 85.

Q. How many were there in building 5?

A. Approximately around 40, 35 or 40.

Q. Were all the men in building 3, men who worked in building 3 regularly?

A. No.

Q. Were all of the men in building 5 men who worked in building 5 regularly?

792 A. No.

Q. After the meeting of the bargaining committee in the chemical building, did your committee or any of its members have any further meetings with Mr. Anselm or anyone else of the management?

A. No.

Q. Did you ask Mr. Aitchison or Mr. Anselm for permission to occupy buildings 3 and 5, and to move your beds and food in there?

A. No.

Q. Did you ask any officer of the company for that permission?

A. No.

Q. In fact, you never mentioned it to them, did you?

A. What?

Q. That you were going to occupy buildings 3 and 5, and move your beds and food in there?

A. Why should we? We protested for our collective bargaining and recognition of the union.

Q. Never mind why you should; did you?

A. I didn't, no.

Q. As far as you know, did any member of the committee do that?

A. Not that I know of.

Q. Mr. Anselm came to building 3 about four hours after the building was taken over, did he not?

A. I don't remember. I was upstairs.

793 Q. You have some information about that, have you not?

A. No.

Q. You remember testifying before the Circuit Court of Lake County that Mr. Anselm and I came to the building, building 3, about 6 o'clock in the evening after we were refused admission, and announced in loud voices that the men in the building were discharged?

A. I never heard you.

Q. Do you remember your testimony about that?

A. I remember the testimony, that I heard somebody make that remark in the building, but I never heard you.

Q. You were told?

A. No, I wasn't told. Somebody merely walked through the shop and said we were fired by somebody.

Q. For the purpose of refreshing your recollection, let me read you this statement, and I will ask you whether you made this statement under oath in the Circuit Court of Lake County,—this is a question that was put to you—:

Question: "And how was that discharge brought about, how did your employment end?" Tell me whether you answered as follows:

Answer: "Well, I heard—I wasn't present where this happened, but I was told that Mr. Anselm and Mr. Swiren had been at the back door of building 3, and they hollered in, 'All fired, all the people that is in this building.'"

794 A. I remember testifying that I said then that somebody came through the building and said that they fired us. I was in about the middle part of the building, and somebody came through.

Q. When was that, the evening of the 17th? Is that right?

A. Yes.

Q. That is when you were told that Anselm and Swiren had been at the window?

A. That is what I heard.

Q. You knew who Mr. Anselm was?

A. Yes.

Q. Were you told who Mr. Swiren was?

A. No. I didn't know you then.

Q. You have since learned—

A. Oh, yes.

Q. —that Mr. Swiren is counsel for the company?

A. Yes, I did.

Q. As soon as you heard that you had been discharged, you got up and left the building, is that right?

A. No.

Q. You stayed on?

A. Yes.

Q. Until the sheriff's gas came into the building on the morning of the 26th, is that right?

A. They didn't come in the building while I was there.

795 Q. After the sheriff appeared with his men and gas guns, you left, did you?

A. Yes. I went home.

Q. How did you happen to leave?

A. Well, that is a funny question to ask.

Q. What is that?

A. That is a funny question to ask. If you was there with me, you would have left the same way.

Q. I would not have gone in.

A. That may be.

Q. You told Mr. Aitchison and Mr. Anselm at various times that you had been asked to organize this union, or help get it organized, did you not?

A. Did I tell Mr. Aitchison?

Q. Yes, or Mr. Anselm.

A. I never told Mr. Aitchison that, I don't believe.

Q. You are sure of that?

A. Well, I am sure that I didn't tell them I was asked—there was no question brought up about that.

Q. Well, beginning in the middle of July—

A. Yes.

Q. (Continuing) —you brought it to the attention of the officers of the company that you were active in the union, did you not?

A. I did?

796 Q. Yes.

A. By request.

Q. Well, you appeared at a conference, did you not, in the middle of July?

A. Yes.

Q. This was a conference between you and some other members of the committee?

A. You are referring to the time when Mr. Aitchison, Mr. Luther, Mr. Lodell, and Mr. Troxel was present?

Q. Yes.

A. All right.

Q. There was no question but what you were active in the union organization, was there?

A. I was.

Q. At that time?

A. Yes.

Q. That was known at that meeting?

A. Yes.

Mr. Walsh: Will you identify the date, please?

Q. (By Mr. Swiren) That was when?

A. I don't remember the date.

Q. About the middle of July?

A. No, no; that was the last part of July.

Q. The last part of July?

A. Yes.

797 Q. Did you do anything since then to indicate that you have withdrawn from lodge 66?

A. No.

Q. Have you worked steadily—

A. What?

Q. (Continuing) —for the Fansteel Company during the last year?

A. Yes.

Q. Until when?

A. Until we got gassed out.

Q. You did not work from the 17th of February through the 26th, did you?

A. That was a protest.

Q. I say, you did not work, did you?

A. Well, we had to do some work.

Q. You did not do any production work, did you?

A. No production work, no.

Q. So that the last time you worked was February 17th, 1937, so far as the Fansteel Company is concerned, is that right?

A. Yes.

Q. Were you discharged during that period?

A. Well, you just had my testimony that I—

Q. I mean, before February 17th; before the evening of February 17th.

A. No.

798 Q. You testified yesterday that some of the men were worried, you might say, when you were called to the office of Mr. Radke.

A. Yes.

Q. Did you assure them when you got back that you had not been discharged, or even threatened with discharge?

A. Yes.

Q. You told them that?

A. Yes. I told them there was no need to worry. I said, "They didn't fire me, and I am still here."

Q. No member of your union was discharged during that period, were they?

A. No.

Q. Did you get any increase in salary, or hourly rate of pay?

A. Oh, yes; after we started to organize, then there was some increase made in pay.

Q. Did you get some?

A. Yes.

Q. Did you get some increase?

A. I did.

Q. Some of the other officers of the union got increases, did they not?

A. Well, I wouldn't say the officers, because there were practically—everybody was getting some in the plant there.

Some of them was getting—those that they knew were not union members probably was getting more than those 799 that belonged to the union.

Q. You say "probably". You do not know, do you? You do not keep the records, do you?

A. No.

Q. You do not go around checking the pay envelopes, do you?

A. No. That was just rumors.

Mr. Swiren: I ask that the rumors go out.

The Witness: All right.

Mr. Swiren: Let the facts stay in.

The Witness: All right.

Mr. Swiren: If the Examiner does not mind.

Trial Examiner Dudley: The Board will so note, when it reviews the testimony.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: May we have a short recess, if the Examiner please?

Trial Examiner Dudley: I will announce a recess for about five minutes.

(Thereupon a recess was taken, after which the hearing was resumed in the court room of the Circuit Court of Lake County.)

Trial Examiner Dudley: Let us proceed, gentlemen.

800 Mr. Walsh: Mr. Examiner, I want to offer at this time in evidence the charter of lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America. I would like to request that we withdraw this exhibit, and have a typewritten copy made which will contain all the printed matter in the charter. We will then offer that in evi-

dence instead of the charter itself, and substitute it for this exhibit.

Mr. Swiren: We have no objection.

Mr. Walsh: It will be marked, I think—

Mr. Swiren: You are not going to try to reproduce the drawings, are you?

Mr. Walsh: The drawings, the eagles and other figures will be omitted.

Trial Examiner Dudley: There being no objection, this document will be marked Board's Exhibit No. 16 for identification, and the typewritten copy may be introduced as Board's Exhibit No. 16.

(The charter referred to was thereupon marked Board's Exhibit No. 16 for identification.)

Mr. Walsh: Mr. Carl Swanson. This witness has been previously sworn, your Honor.

CARL ANDREW SWANSON, recalled as a witness on behalf of the National Labor Relations Board, being previously sworn, testified further as follows:

801

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Swanson, you were a member of the negotiating committee of lodge 66, were you not?

A. Yes, sir.

Trial Examiner Dudley: Just a moment.

Mr. Walsh: I beg your pardon.

Trial Examiner Dudley: Just a moment, please. Let the record show, Mr. Reporter, that Mr. Swanson has been called as a witness previously, was sworn, and has claimed his privilege.

Proceed, Mr. Walsh.

Q. (By Mr. Walsh) You were present at a meeting between the negotiating committee of lodge 66 and the management of Fansteel Corporation on September 10th, 1936?

A. Yes, sir.

Q. Will you tell the Examiner just what occurred at that meeting? Will you also tell who was present representing the lodge, and who was present representing the management?

A. The committee was composed of president John Kon-drath, recording secretary Edward Ruck, Clarence Dreyer, vice-president, I believe, at that time, Frank Latz, Angelo Galbavy and myself.



Q. Who was representing the management?

A. Mr. Anselm, plant superintendent.

Q. Had this committee been empowered by the lodge to bargain for it?

802 A. Yes, sir.

Q. To bargain for the various members collectively?

A. Yes, sir.

Q. That authorization had been given at a meeting of the membership of the lodge?

A. Yes, sir.

Q. Will you tell what happened at that meeting? Tell what the committee said to Mr. Anselm, and what Mr. Anselm said to the committee.

A. The spokesman, I believe, of this committee, presented a tentative or proposed agreement of lodge 66 for collective bargaining, working conditions, and other matters along that line, and committees to be set up at later times, I believe, for the discussion of wages, hours and so forth.

Q. What did Mr. Anselm say about the contract?

A. Well, the contract—Mr. Anselm read it over, and we discussed it. He said that there was conditions in there he thought was fair; he thought that the contract was fair, everything except lodge 66.

He says that they couldn't give us that recognition, but otherwise he said he believed he could give us everything that was in there, and even some things that weren't in there; but not recognition of lodge 66.

Q. At that time did he say anything about your organizing your representation plan in the plant?

803 A. There was a leaflet or booklet, I believe, discussed at that time about an E. R. P., or something like that, they called it, that they had at the American Steel & Wire Company, I believe.

Q. I hand you what has been marked for identification Board's Exhibit No. 13. I will ask you whether or not that is the leaflet you received from Mr. Anselm at that time.

A. Well, it was a pamphlet on the order of this here. I wouldn't say it was exactly the same thing, but it was a pamphlet on the order of this one here.

Q. It contained the representation plan of the American Steel & Wire Company?

A. Yes.

Q. The Waukegan works?

A. Yes.

Q. What did he say about your organizing a similar representation plan?

A. He asked members of the committee if they couldn't take that back and discuss it with the employees, and give it consideration, if that wouldn't fit our plant better.

Q. You mean, fit your plant better than an outside union?

A. Yes.

Q. Later did you receive some literature from the company about a proposed representation plan?

A. Well, I believe that there was notices posted in the 804 buildings, and also that there was notices mailed to individuals.

Q. I will hand you what has been marked for identification Board's Exhibit No. 15. I will ask you whether or not that literature was delivered to members either personally or by mail.

A. Yes, sir.

Q. That was delivered to the employees of the company?

A. Yes, sir.

Q. Do you remember about when that was delivered?

A. That was delivered some time between—in the middle of September or around there.

Mr. Swiren: What was the answer, please, Mr. Reporter. (The answer was read.)

Q. (By Mr. Walsh) About this time, around about September, or maybe before that, had there been attempts by various people to talk with the management about grievances they had in the plant?

A. You mean, as individuals?

Q. Yes.

A. I can't recall at that time, sir.

Q. All right. Now, how did you go about drawing this particular contract that was submitted to the company on the 10th of September?

A. The committee had various contracts, that is, tentative contracts of other organizations and so forth. The 805 foundation of it was gotten by asking the members their plans, and what they thought. It was their express desires, the way they thought it would be best operated.

Q. How did you figure out which was best for each department?

A. Well, there had been committees from each department. Members were supposed to have been contracted, and to have given their expressions as to what they thought would be

needed, or should be stipulated in this contract as to working conditions, wages, hours and so forth.

All of their expressions were supposed to be molded into one, and applied as to all of them generally.

We weren't trying to pick out every little thing, but were trying to cover the plant generally. Of course, in some departments, if they had something that was worse than in another department, some fault, that fault of course was supposed to be identified itself.

Q. Did Mr. Anselm refuse to treat with you as an outside union?

Mr. Swiren: That is objected to. I ask that counsel be directed to ask the questions,—

Mr. Walsh: I will withdraw it.

Mr. Swiren: —and not answer them.

Mr. Walsh: I will withdraw it. I am sorry.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh) What did Mr. Anselm say to you 806 about recognizing lodge 66?

A. He said they couldn't recognize lodge 66. There was a discussion there at the meeting by different members. He asked different members different questions.

There was mention of what rights we thought we had, and so forth, and mention of the Wagner labor laws and various things like that.

Q. Now, getting on to September 21st, I believe there was another meeting between representatives of lodge 66 and the company.

Would you tell the Examiner about that meeting.

A. We went to the management's office after lunch, and went into the office. As we approached the secretary's office, someone in the office that works there upstairs, addressed me, and I spoke to him.

He asked me a few questions, and the rest of the committee had gone in to Mr. Schultz' office. Somebody called to me to come in, and I said, "Just a minute, until I get through talking to this gentleman. I will be right in."

It was just a second longer, and then I came in. When I came into the office, Mr. Anselm, the plant superintendent, was there, and there was confusion.

It seemed that there was some misunderstanding or something, and I heard the expression "Get out." to Mr. Adelman.

Q. Who addressed that expression to Mr. Adelman?

807 A. Mr. Anselm. He was walking back and forth in back of his desk. I escorted Mr. Adelman out to the wait-

ing room, and told him I would bring word to him whether we would be allowed to meet with him or not.

I went back in, and we discussed the matter there, and we tried to explain to Mr. Anselm that this committee had been informed a meeting had been arranged for this committee with the management, and he said no, absolutely no, that there had been no meeting arranged, not that he knew of.

I said, "If that is the case, there has been a misunderstanding, and I wish to apologize for this committee. We do not have anything further." He said that if the committee wanted to talk, he was willing to meet the committee any time; but we said we were there as a committee from the union with our representative, and that it was the understanding there was to be a meeting, but if there was to be no meeting, and had been no meeting arranged, we would excuse ourselves.

I apologized, and then I went to inform Mr. Adelman that there had been no meeting, and that we had to disperse and go back and get out. So we did.

Q. Did you present a contract of any kind at that time?

A. No. We didn't present anything, I do not believe, at that time. What took place before I got in there I don't know, but up until the time I got in there, there hadn't been any contract presented to my knowledge.

808 Mr. Swiren: May I have that question, please?

(The question was read.)

Q. (By Mr. Walsh) Did you present a contract of any kind at that meeting on the 21st of September?

A. I don't remember whether the members had presented one before I came in there or not. I don't remember just what took place at that time.

Q. Now, referring to this paper that I have just handed you, do you recall what that document is?

A. This is the agreement we went over again and revised.

Q. That is—

A. We was going to present that to the management.

Q. That is an agreement that was revised after the refusal on September 10th?

A. Yes.

Q. Is that right?

A. Yes.

Q. Do you know whether that was presented to the company?

A. I couldn't say for sure. I am under the impression it was, but I don't know when.

Mr. Walsh: All right. I will offer this in evidence.

Mr. Swiren: Which one is that?

Mr. Walsh: That is that revised contract.

Mr. Swiren: Yes. That was offered, so far as we know, on the 10th.

809 Mr. Walsh: That was the one offered on the 10th.

Mr. Swiren: That is my understanding.

Mr. Walsh: Will you mark this Board's Exhibit No. 17, please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 17 for identification.)

Mr. Walsh: I offer in evidence, if the Examiner please, the agreement which has been marked BOARD'S EXHIBIT NO. 17 for identification.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked Board's Exhibit No. 17.)

Q. (By Mr. Walsh.) Now were there any attempts by the committee of the union to meet with the management between the 21st of September, 1936 and the 17th of February, 1937?

A. Inclusive?

Q. Between those two dates did you try to meet with the management?

A. Yes, sir.

Q. On what dates, do you recall?

A. February 17th.

Q. Well, were there any attempts made between the 21st of September the February 17th?

810 A. I do not believe there were.

Q. All right. Now, getting on to the 17th of February, 1937, will you tell the Examiner what occurred at the meeting between the committee of the lodge and the management.

A. The committee of lodge No. 66 met Mr. Anselm in his office.

Q. At what time of day?

A. Well, around 8:30, or somewhere around there.

Q. In the morning?

A. In the morning.

Q. All right. Who was on the committee?

A. That was a large committee. John Kondrath, Ed Ruck, Harold Dreyer, Charles Warner, Frank Zelenick, Roy Brown, Angelo Galbavy, Fred Hensly, Reginald Ross, Walter Bunton, Stanley Grum, Robert Pratt, Frank Latz, and Steve Ark.

I believe there was one or two members absent. I am not positive now.

Q. The committee consisted of the officers of the union, and representatives from each department, did it not?

A. Yes, sir.

Q. Had that committee received any instructions from the lodge?

A. Yes, sir.

Q. What were those instructions?

A. The committee was given full power to attain collective bargaining for lodge 66, and union recognition.

811 Q. In the event the committee did not obtain those things, what was the committee empowered to do?

A. Their will; their wish.

Q. Now, you met Mr. Anselm on the morning of the 17th, about 8:30; what did he say to the committee, and what did the committee spokesman, or whoever spoke for the committee, say?

A. The spokesman explained to Mr. Anselm that this committee was over there to get collective bargaining for lodge 66 and its members, employees of Fansteel, and that they wanted a definite answer; that the members of the lodge felt that the committee on previous occasions had not been insistent upon their demands, and that we were letting the company push us around, and we were not sticking up for their rights as they considered them under the Wagner labor law.

Mr. Swiren: Who was the spokesman, may I ask, for the record, Mr. Walsh?

Mr. Walsh: We will—

The Witness: I could not recall who was spokesman.

Mr. Walsh: I will try to find out.

Q. (By Mr. Walsh) Go ahead, Mr. Swanson.

A. Mr. Anselm said, I believe, "We have given you our answer, and it still stands", and something in respect to that matter.

Other members of course asked question, and they said they were pleading with them to give us recognition, and begging them and that the members of the union were putting us  
812 on the spot; they demanded we do something.



He said there was nothing he could do, but finally he said that there was one thing left he would do for us. He said it would be all right if he would go and ask Mr. Aitchison. He said he couldn't promise us anything, and one of the members said, "Won't Mr. Aitchison come and see us, and talk to us?"

He says, "I will go up there and find out for you what I can." He said, "I can't promise you anything." So, he went upstairs, and then he came back and told the committee to come back in the afternoon some time, and he would have an answer for us. He said he couldn't guarantee us anything, and he wouldn't promise us anything, but he would have an answer of some sort for us.

The committee finally after talking among themselves there, agreed to that proposition.

Q. That you would come back in the afternoon?

A. That we would come back in the afternoon.

Q. Did you return in the afternoon?

A. Yes.

Q. Now, will you tell us what happened at that time.

A. In the afternoon we met in Mr. Anselm's office, and Mr. Anselm said that the answer was the same.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele) Mr. Swanson, who was spokesman on the occasion of the visit to Mr. Anselm's office on September 10th?

A. September 10th?

Q. Yes.

A. I believe Mr. Ruck was the spokesman.

Q. What did Mr. Ruck say, if anything, to Mr. Anselm with reference to the union, or about the union?

A. Well, there was a discussion that covered a lot of words. I believe he introduced the tentative proposal or agreement, and after that just what took place was talk about a union, and so forth.

Q. Was there any discussion of what the union was, who was in it, and so forth? Was there any discussion of that sort of thing, the identity of the union?

A. The identity of the union was known as lodge 66 and its members.

Q. I know, but—

A. Of the Fansteel Metallurgical Company.

Q. It was known to you. Was it made known to Mr. Anselm? Was there anything said along that line?

A. I believe when the contract was presented, that that was included in the statement that this was a committee from lodge 66, of employees of the Fansteel Company with this tentative proposal or agreement for their consideration.

Q. Well, did you say anything to Mr. Anselm as to who was in the union?

814 Let me explain that question by saying that, as I understand it from your previous testimony not everybody in the plant was in the union at that time.

A. I don't recall. There was a discussion at that time more upon our rights to have the union, and unionism, and our request for unions, than anything else.

Who was in the union at that time—I don't believe there was any discussion about that. I wouldn't say for sure.

Q. Membership cards were not displayed to Mr. Anselm, were they?

A. No, sir.

Q. No authority, written authority from the union was given to Mr. Anselm at that time, or exhibited to him?

A. Well, that tentative agreement—whether it was signed by the officers of the committee at that time I couldn't say. I would not say as to that.

I should imagine it was signed. I do not know whether it was or not.

Q. The charter was never presented to him, was it? A charter was never shown to him, is that not right?

A. Mr. Anselm never requested to see a charter.

Q. You did not show it to him, did you?

A. It was never requested, sir, and it was never shown.

Q. Did you say to him anything about how many men were eligible for this union?

815 A. Not at this meeting; I don't believe there was anything mentioned at all.

Q. Was anything said to him as to whether or not you would include laboratory workers, foremen, and office workers?

A. Only what was in the contract; if that was in this tentative contract, that proposal, it might have been discussed.

Q. Otherwise not?

A. Otherwise, I couldn't say; I couldn't say what was discussed at that time outside of this contract, and our union.

Q. A closed shop was discussed at that time, was it not?

A. I couldn't say it was, at that time, at that meeting.

Q. Was the check-off system discussed?

A. If it was in the contract, it might have been discussed.

Q. Did not Mr. Anselm say at that time that no one—or words to this effect—working for the Fansteel Company would be compelled to join the union against their will?

Is that right?

A. What Mr. Anselm said as to statements to that effect, I couldn't say. The only thing I can say is we went in there with this contract. It was discussed generally by the men, and by Mr. Anselm. The proposal of this other employees' representation plan, the E. R. P. or whatever it was called, that was discussed, and lodge 66 was discussed.

Now, there was general discussion. If that was said there, I don't remember it.

816 Q. You did not say to him there, "Well now, this represents the wishes of 86 men; we have 86 men here at this time"?

A. It was the wishes of the members of lodge 66.

Q. But you did not say to him, "We have 86 men who want this". You did not say anything like that to him, did you?

A. If there was anything said at that time like that, I can't remember it, sir.

Q. I believe you testified yesterday that at this time, September 10th, there were 86 members in the union?

A. I won't say there was only 86; there probably was more than 86, at that time.

Q. But—

A. To my knowledge, at that time, I mean.

Q. I believe, as I recall it—I put it down here—you said there were not over 160 eligible at that time?

A. I believe so, sir.

Q. Were you counting among the men in the union at that time, men who were in the protest, as you call it, and occupied buildings 3 and 5, who have since gone back to work in the company?

Were a number of those men included in the membership at that time?

A. What percentage was included at that time—

Q. I am not asking you about what percentage. I mean, were those men included, or some of those men?

817 A. Some of those men were.

Q. Are they still members of lodge 66, the men who have gone back to work, or have they dropped from membership in the union when they returned to work at the company?

A. There has been no action taken by the union as to their standing up until the present time.

Q. Have those men attended any meetings, those men we are talking about now who returned to work at the Fansteel Company?

Have they attended any meetings since, or taken any part in union activities at all?

A. You mean, these men that—

Q. Returned to work.

A. —returned to Fansteel?

Q. Yes.

A. Have they taken part in any meetings, or any union activity?

Q. Yes, since the 26th of February?

A. Since the 26th of February?

Q. Yes.

A. I believe that there was some members present at meetings. Whether they were on the picket line I could not swear as to that. What other activities they took in, I could not say, because it has not been routine.

Q. That is your best recollection, that immediately after February 26th they were not in the picket line?

818 A. Who was in the picket line at first, down there, I don't know, because I wasn't down to the picket line until a long while afterwards, a couple of weeks anyhow, or three weeks.

Q. Have any of those men paid dues to the union since they went back to work?

A. I couldn't say that, either, whether they have or not, now.

Q. Do you know where the books and records of the union, of lodge 66 are now?

A. I do not, sir.

Q. There was a time when Ed Ruck was secretary, recording secretary of the lodge, was there not?

A. Yes, sir.

Q. He is not acting as such, or in such capacity, and has not so acted for some few months now, is that correct?

A. Well, Mr. Ruck has been absent from most of our meetings, and he has not acted in that capacity.

Q. I believe yesterday you testified that he had left the books in your custody when he ceased to act in that capacity, is that correct?

A. They were left, I believe, at the hall, with instructions probably—I might have been told he had left them there. I couldn't say exactly.

Q. Were you present at the time he left them?

A. I wouldn't say; it has been quite a while ago.

Q. Now, with reference to your own books, as financial  
819 secretary, I assume you have some as financial secretary;  
do you know where they are?

A. No, sir.

Q. Where did you last see them?

A. In Slovenik Hall.

Q. How long ago?

A. I couldn't tell you the exact date, whether it is a week  
or two weeks.

Q. Well, approximately.

A. Anywhere from a week to two weeks.

Q. Where were they in Slovenik Hall?

A. In our lodge room down there.

Q. Were they locked in a safe? What precaution did you  
take to see that they were kept intact, and to see that they  
were kept together?

A. A party was going to take care of them for me.

Q. Who?

A. A party.

Q. What we are trying to do is trace the whereabouts of  
those, Mr. Swanson. I am therefore pressing this inquiry:  
who was the party?

Mr. Walsh: I object as not being material.

Mr. Keele: Well, those books and records, Mr. Examiner,  
I believe will be material.

Mr. Walsh: If they become material, they probably  
820 will be produced.

Mr. Keele: The fact is, we need them right now, in  
order to properly examine every witness who has testified  
here. We have been placed under a handicap by the fact  
that we do not have them present, although they have been  
requested by subpoena.

We are trying to lay the foundation so they can be prop-  
erly subpoenaed. In order to subpoena them, we have to know  
where they are.

Mr. Walsh: I know of no proceeding in which the defend-

ant is entitled to have witnesses called, prior to his time to present his evidence, to produce records.

Mr. Swiren: This witness has testified with respect to a number of things which makes it necessary for us to have those documents to cross-examine him on.

Trial Examiner Dudley: You can use your subpoena duces tecum when the proper time comes.

Mr. Swiren: I can not think of anything more important to the questioning of the accuracy of the witness' testimony as to the matters contained in his records than where the records are, if there are such records, and what has happened to them.

It seems to me that they are the best evidence. We ought to know whether they exist, and if so, where they are. We want to know where they are. Are they in existence, or are they not?

821 Trial Examiner Dudley: I am inclined to think you overemphasize the importance of them at this time.

Mr. Swiren: No.

Trial Examiner Dudley: Even if a subpoena were issued, if the witness did not have them, they could not be produced.

Mr. Swiren: I notice that when Mr. Walsh wants a subpoena served, it is served within 10 minutes. We have not been able to get them served for nine days.

Trial Examiner Dudley: That is nothing I have anything to do with. Ask your question. I do not object to that.

Mr. Keele: May I for the purpose of the record again state that without the records of the union, for which we have made application through a subpoena duces tecum, it is impossible for counsel to question this witness, and to check him as to the accuracy of his statements, and that the failure of the Board to issue the subpoena and the failure of the lodge to produce those records is highly prejudicial, in the opinion of counsel, highly prejudicial to the case of counsel.

If they are later produced, it does not make for an orderly record. As the Examiner will appreciate, whoever examines the record is after all presumably only a human being. Fatigue enters in, and it is impossible to have evidence introduced at the end of a trial, or toward the close of a trial, carry as much weight in the mind of the examiner of the record, or the examiners of the record, as though it were

822 introduced at the proper time. I submit again that the failure to issue the subpoenas and thereby compel the production of the books is highly prejudicial to our rights.



Trial Examiner Dudley: In response to that, I would say that the Examiner has nothing to do with the issuing of subpoenas, and even if subpoenas were issued, and the documents were in the court room, you would have no right to examine and use them at this time unless it was through the courtesy of the Board, inasmuch as this is not the proper time to call your witnesses, or put in your evidence.

Those documents could be lying there on the table now, and you would have no right to look at them unless Mr. Walsh was willing to let you look at them, because you cannot call witnesses or introduce documents until it is your time to put in your case.

Mr. Keele: We cannot examine him with reference to those books—

Mr. Walsh: He does need the records themselves, prior to the time he goes forward with his case.

Mr. Keele: We have a right to have them, in order to properly cross-examine the witness.

Trial Examiner Dudley: If you did have, and examined him with reference to them, it would be beyond the scope of the direct examination.

Mr. Swiren: How could anything be outside of the 823 scope of the direct examination, when the direct examination is the witness' recollection of what is in the records? Obviously we have a right to have the records produced, and question him concerning them.

Trial Examiner Dudley: The witness on direct examination has not introduced the exhibits. Manifestly counsel on cross-examination cannot examine on the exhibits until they become part of the testimony.

Mr. Keele: Of course, that is not correct.

Mr. Swiren: If the witness testifies as to the subject matter, we can certainly go into the basis for that testimony, namely, the records.

Trial Examiner Dudley: Not until the witness is your witness.

Mr. Walsh: When you get the records, you can call him as your witness.

Mr. Keele: Has the Examiner so ruled?

Trial Examiner Dudley: There is no need of going ahead on this. It is purely academic, and we are wasting time.

Mr. Keele: We do not think it is academic. We think it is a denial of our due process.

Trial Examiner Dudley: Do you have any further questions?

Mr. Keele: What was the last question?

(The question was read.)

Mr. Walsh: I object.

824 Trial Examiner Dudley: Objection overruled.

The Witness: I do not recall the party. It was one of the members down there that I gave them to, to see that they were placed in the hands of my wife at that time.

Q. (By Mr. Keele) Have you seen them since? That is the only thing I am interested in. Have you seen those records since?

A. I don't know where they are at the present time.

Q. That is the last time you saw them?

A. I wouldn't say whether she was requested during our trial to present the records to our attorneys at that time or not. I wouldn't say whether she had them up here for our attorneys or not.

Q. When you talked with Mr. Anselm on the—was it the 21st of September or the 22nd of September that you talked to Mr. Anselm?

A. Well, it is about that date; I wouldn't say exactly the date. It was around that time.

Q. The committee went in again at that time?

A. Yes.

Q. That was the same committee of six men; that is, Ed Ruck, John Kondrath, Clarence Dreyer, and Galbavy?

A. I would not say just exactly; there were about five or six men on that committee. I will say Ed Ruck was there,

John Kondrath, myself, and who the remaining members  
825 were, I can't say.

Q. At that time was there any discussion as to who the members of the union were, or how many members there were of the union? I am referring to the discussion with Mr. Anselm.

A. There might have been a discussion before I came in there.

Q. You did not hear any?

A. Not that I recall. All I can remember is what I said here.

Q. You testified a while ago I believe that at one of these meetings with Mr. Anselm—I have forgotten which one—there was some discussion as to your right to collective bar-

gaining under the provisions of the Wagner Labor Relations Act?

A. That was mentioned at one of the meetings, yes, sir.

Q. Which one? Was it the meeting of September 10th, or September 21st, or February 17th?

A. September 10th, I believe; I believe it was on September 10th that it was mentioned.

Q. What was said with reference to that?

A. Well, somebody had made a remark about the Wagner law, and Mr. Anselm wanted to know just what our definition of that was, or our understanding.

It was explained to him, I believe at that time, our definition and our understanding of it.

Q. Well, do you recall what was said?

A. Not exactly. In general the answer was that the 826 company would not consider the Wagner law as giving us those claims that we claimed for at that time.

Q. Now on the occasion of the meeting of September 21st between Mr. Anselm and the committee, was Mr. Adelman introduced to Mr. Anselm?

A. I could not say now. As I said before, when I came into the office I was late getting in there because I was detained in the outer office, or the waiting room, by one of the clerks or members of the firm from upstairs.

I couldn't say whether he had been introduced or not.

Q. Was there any statement made by Mr. Anselm to the effect that Mr. Adelman would have to go out and wait for an appointment in the reception room, or waiting room?

A. I couldn't say as to that. The only thing I can say is that Mr. Anselm wished to have Mr. Adelman get out of the office. That was the general conversation.

Q. Did he not say to him, "If you want to see me, you will have to present your card or make a request for an appointment"?

A. I don't recall that.

Q. You would not say that was not said, would you?

A. No, sir, I would not. I say, there was conversation before I came in there. What took place, I don't know.

Q. Now, with reference to February 17th, when the committee went into wait on Mr. Anselm, did he not tell you 827 that the policy of the company had been set forth in the letter which had gone out to all employees previous to that?

Did he not say that it was not changed, that the company had not changed its position?

A. I would not say that was the answer.

Q. Was not some reference made to that letter?

A. I could not say; I do not remember at this time whether there was or not.

Q. You went back at 2 o'clock?

A. Yes.

Q. Then what did you do, after you left the office of Mr. Anselm?

A. We went back inside of the fence, on to the plant proper.

Q. Did all the committee go along with you? Did the entire committee in other words, go back?

A. As nearly as I can remember, I believe they did.

Q. What did they do then when they got inside of the fence, the members of the committee?

A. Some said, "Well, what will we do," and somebody suggested "Let's go to one of the buildings to decide what answer we will give to the men when we come back," because the men in the plant were waiting for the answer. They were eager to find out what had taken place during the meeting.

Q. Then what happened?

A. It was suggested that we retire to the chemical building.

828 Q. Yes. You did that, did you not?

A. Yes, sir.

Q. Then what did you do in the chemical building?

A. Somebody suggested that we take a vote on the attitude of the members in response to the company's reply to our request.

Q. Then what was done?

A. A vote was taken.

Q. As to what?

A. As to we would do.

Q. What was the result of that vote? I mean, was it a unanimous vote?

A. As far as I can recall, I believe it was unanimous.

Q. What did the members of the committee vote to do?

A. To protest, by stopping work in a strike against the attitude of the management.

Q. That was all that was said?

A. That was.

Q. Did they say how they were going to protest?

A. By stopping work, and having a strike.

Q. They were all going to go home?

A. No, sir.

Q. Well, that is what I want to find out. What were they going to do? How were they going to have this protest? How were they going to have this strike? What were they going to do in pursuance of it?

A. Occupy certain buildings, that is, retire to certain 829 buildings and stay there.

Q. Stay there until when? How long would you stay there?

A. The members figured they would only have to stay there for a few hours.

Q. Were they going to work while they were there?

A. No, sir.

Q. Were they going to permit any work to go forward while they were in there?

A. No, sir. That was up to the individuals.

Q. Was it agreed as to who was to stay in the buildings, whether they would allow the women to stay in the buildings, or whether they would allow foremen to stay in the buildings, or whether they would allow company people to stay in the buildings?

A. Someone suggested that the women be asked to go home, so if it necessitated being there longer, it would not put us in a position—

Q. Of difficulty with your wives?

A. Wives, and their girl friends, and so forth.

Q. All right. In other words, they figured they might be there several days?

A. We didn't know, but we anticipated only being there a short time.

Q. You sent the girls home?

A. Yes, because it was late.

830 Q. It was 2:30 in the afternoon, was it not?

A. Around there, some time, yes.

Q. It was several hours before work stops ordinarily, was it not?

A. About an hour and a half or so.

Q. What do you mean by "late"?

A. Well, it was late in the afternoon. We did not want to have the girls there overnight, if it was necessary.

Q. And if it was necessary, you were prepared to stay there?

A. We were not prepared, no, sir.

Q. Then why did you send the girls home? I am trying to understand your answer, as to whether you thought it was necessary or not.

A. It was somebody's suggestion that it would not be proper for the girls to stay there.

Q. Was there any reason suggested why it was improper for the foremen to remain there?

A. No, sir.

Q. None of the foremen were women, were they?

A. Were any of the foremen women?

Q. Were any of the persons acting as foremen women? None of them were women, were they?

A. There was no foremen that were women. There was some foreladies, I believe.

Q. The foremen were not permitted to stay in there, were they?

831 A. I believe they were asked to retire.

Q. They were told to go out, were they not?

A. Well, I wouldn't say what they were told, Mr. Keele. There was confusion and excitement. It was something new to us that was upon us, and what was actually said and what was actually done is hard to state at this time.

Q. Did you hear any of the foremen ordered to get out, or told to get out?

A. I would not say they were told, or how they were informed, or how they were asked, if they were asked to get out, or to go.

I can't say at this time.

Q. Did you discuss that point previously with the committee?

A. As to the disposition of the foremen?

Q. Yes.

A. No, sir.

Q. Had you not determined that no foremen were to remain in the building?

A. Not to my knowledge, nor, sir.

Q. Did you discuss this matter with the foremen before you went into buildings 3 and 5, after you had had your vote in the chemical lab, or chemical building?

A. Whether the individuals had discussed it with them, I could not say.

832 Q. Did you or any member of the committee discuss it with the management of the company?



Mr. Walsh: Mr. Examiner, I would like to object to this entire line of inquiry on the ground it is immaterial.

I did make an objection when the same type of questions were asked of the other witness. I assume this objection will meet the same fate that the other one did.

I do not care to be interrupting all the time. I would like to have the record show I am objecting to the entire line of inquiry.

Trial Examiner Dudley: Overruled. How long do you think it will take to conclude, Mr. Keele?

Mr. Keele: I am willing to adjourn now, if you want to. I suppose it will take a few minutes. It is now twenty minutes to five.

It probably would be advisable to resume at the next session.

Trial Examiner Dudley: I think it is rather immaterial, but I will let you go into it for what weight it may have.

Mr. Keele: Well, your point was whether we had better try to finish up with this witness at this session, as I understood it.

Trial Examiner Dudley: Yes. Can you do it in five or ten minutes?

Mr. Keele: I think we can do it in five or ten minutes.

833 Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Keele) I believe the last question I asked was whether any member of the committee had discussed this with the management, taking over these buildings.

I will speed it up by asking, was the matter of taking over these buildings discussed with any member of the management, or officer of the corporation?

A. Whether any member had intimated that to Mr. Anselm in our meeting, I would not say. There was a lot of discussion, and there were some of the members giving lots of advice.

Q. It had not been voted upon at that time, had it?

A. No.

Q. After it had been voted upon, the men went to buildings 3 and 5, did they not, the members of the committee?

A. I don't think they did.

Q. Did they go back and call upon the management, and tell them what they had decided they were going to do?

A. No. I believe they went back to their respective departments.

Q. They did not go back and talk to the management about it, as far as you know?

A. Not to my knowledge, sir.

Q. They did not, you say?

A. No, sir.

Q. Did you get permission from the management to go in there and stay in the buildings?

834 A. I didn't have to get permission—

Q. Answer yes or no.

A. —to stay in there.

Q. Just answer yes or no.

A. No, sir.

Q. Now, shortly after you were in there, the doors were locked and barricaded, were they not?

A. The doors were—I don't know whether they were locked or not. I couldn't say as to that. At times they might have been barricaded, and at times they were open.

Q. A demand was made upon the men occupying the buildings, to leave, that afternoon?

A. I wouldn't say as to the exactness of that or not.

Q. Well, Mr. Anselm and Mr. Swiren came there that afternoon, did they not, and tried to get in?

A. I couldn't say as to that, either, just what took place.

Q. You mean, you do not know anything about what happened, or what was going on there?

A. That is a large building, Mr. Keele.

Q. Yes.

A. I was all over that building at different times, and what took place at certain times I can't testify to, if I wasn't there at the exact minute.

Q. About 6 o'clock in the evening you knew that Mr. Swiren and Mr. Anselm came there; you either saw them  
835 or heard them, did you not?

A. Yes.

Q. You knew a request was made by Mr. Swiren and Mr. Anselm to get into the building?

A. I didn't know, sir, at the time, a request had been made.

Q. Did you know that they told the men at that time they were discharging those men who did not come out?

A. There was a statement made, but just as to the full effect of it, I could not say. It was something on that order.

Q. You know Mr. Swiren talked with you there at the window, do you not?

A. Yes, sir.

Q. Now—

A. Well, now, I wouldn't say whether it was Mr. Swiren or not.

Q. You have since learned it was Mr. Swiren, this gentleman sitting here to my left, have you not?

A. Is that Mr. Swiren?

Q. He is the man, is he not, who talked to you at the window?

A. I have never been introduced to the gentleman, sir.

Q. Let us get away from all of this "After you, Alphonse", and let me ask you, regardless of whether you had been formally introduced to the gentleman, was the gentleman sitting on my left the man to whom you talked that night through the window, about 6 o'clock?

836 A. I wouldn't swear it was him.

Q. You would not say it was not, would you?

A. I wouldn't say it wasn't him either.

Q. There was a man with Mr. Anselm there that night, was there not?

A. Yes.

Q. That man was the same man—the man with Mr. Anselm—there that night who handed in a written paper, is that not correct?

A. I don't recall, sir.

Q. You do not remember that?

A. No, sir, I don't.

Q. You remember going to the building there that afternoon, do you? Are you sure about that? Did you go into that building?

A. I think we went there.

Q. Are you any more certain about your meetings with Anselm and what he said than you are as to whether you went there that day, and as to whether or not you received a paper?

A. I remember—

Q. Answer yes or no.

A. I recall that, yes.

Q. You are more certain about that?

A. Yes.

Q. But you are not certain as to whether you received a paper, or whether you were in that building that day?

837 A. Sir, that building was filled with men. There were men all over. There was a few men in fact, arguing back there.

They were asking questions and talking, and exactly what took place I do not recall. The situation was very tense.

Q. Were you discharged at any time before that time that you saw Mr. Anselm accompanied by at least one of the men from the company?

You had not been discharged from the company prior to that time, had you?

A. (No answer.)

Q. Do you not remember that?

A. "Discharged"—that is a classification I don't—

Q. Had you been fired prior to that time?

A. No, sir, not to my knowledge. No, I haven't been fired.

Q. You did hear the gentleman with Mr. Anselm there that evening about 6 o'clock tell you, or tell the men in the building in a loud voice that every man who did not come out was fired, did you not?

A. That, as an exact statement, I can't say. I said, there was men asking me, "What are they saying? What are they doing? Who is out there?"; and so forth.

Q. Well, in substance you heard him say that, did you not?

A. I couldn't say—I couldn't swear to what Mr. Swiren said that evening out there.

838 Q. Well, you did not know Mr. Swiren. You mean the gentleman with Mr. Anselm?

A. The man you claim is Mr. Swiren.

Q. I do not claim he is Mr. Swiren; I say, the man with Mr. Anselm.

A. As to the man with Mr. Anselm, I wouldn't swear as to what he said.

Q. You did not hear him say anything to the effect that every man in the building was discharged?

A. I would say he did, and I wouldn't say he didn't. His exact statement I can't recall.

Mr. Keele: That is all.

Q. (By Mr. Walsh) What was the purpose for which the members of lodge 66 occupied these buildings?

Mr. Swiren: That is objected to.

Mr. Walsh: I will withdraw it.

Mr. Swiren: If the testimony is that there has been an illegal act, it does not make any difference why they did it.

Mr. Walsh: I will withdraw the question.

Trial Examiner Dudley: Is there anything further of this witness?

(No response.)

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Trial Examiner Dudley: We will adjourn at this time 839 until 9:30 A. M. Monday morning.

(Thereupon, at 4:45 o'clock P. M., Friday, June 11, 1937, an adjournment was taken until Monday, June 15, 1937, at 9:30 o'clock, A. M., in the court room of the Circuit Court of Lake County, County Court House, Waukegan, Illinois.)

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843 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XIII-C-80) • •

Circuit Court Room, County Building,  
Waukegan, Illinois,  
Monday, June 14, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the  
National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One  
North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, Suite 2525, One North  
La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fan-  
steel Metallurgical Corporation.

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## PROCEEDINGS.

Trial Examiner Dudley: Are you ready to proceed, gentlemen?

Mr. Walsh: Yes.

Trial Examiner Dudley: You may proceed.

Mr. Walsh: Mr. Examiner, at this time I would like to offer in evidence certain economic data in the form of tables furnished to me by the Division of Economic Research of the National Labor Relations Board. These tables should have been properly included in Board's Exhibit No. 1.

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I will offer in evidence as Board's Exhibit No. 1-J table No. 1, entitled "Rank of Chemicals Industry in the United States."

I also offer in evidence as Board's exhibit No. 1-K table No. 2, entitled "Rank of Chemicals Industry in Illinois."

I offer in evidence as Board's exhibit No. 1-L table No. 3, entitled "The Chemicals Industry: Rank of Illinois."

I offer in evidence as Board's exhibit No. 1-M table No. 4, "Sources of the Ores of Rare Metals."

I offer in evidence as Board's exhibit No. 1-N table No. 5, entitled "The Flow of the Products of the Chemicals Industry."

These tables are collected from various sources in Government publications. I ask that they be admitted in evidence. I have furnished counsel with a copy of the tables. They will be subject to his further check and correction, if the information therein contained appears to be erroneous.

Mr. Swiren: We object.

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: Yes. I do not think it is incumbent upon us to check to find out whether there has been any error or not. I think it is incumbent upon the man who is producing evidence to produce accurate evidence.

With respect to all of these instruments, they are merely copies somebody prepared. Nobody knows who prepared them or what the basis of their accuracy is. It is incumbent upon the proponent of the exhibit to establish its accuracy, and it is not the duty of the defendant to challenge it.

With respect to exhibit 1-J, in addition, it has reference to the chemical industry. The same is true with reference to exhibit 1-K. The same is true with respect to 1-L. We are not in the chemical industry in any respect. We have nothing to do with it, except in common with thousands of others who buy some chemicals. The same is true with respect to 1-N. It has further reference to chemicals and the chemical industry.

Radio apparatus is also casually mentioned in exhibit 1-N, and motor vehicles and parts.

With respect to exhibit No. 1-M, it purports to be a casual discussion of the sources of rare metals. The testimony here shows that our metals are not always purchased at the source.



846 As a matter of fact, the biggest supply of tantalum ore is purchased from an intermediate party, and there is no possible connection between the information on that exhibit and our case.

Trial Examiner Dudley: They may be admitted in evidence for such weight as testimony that they may have.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 1-J, 1-K, 1-L, 1-M, and 1-N.)

Mr. Swiren: Has the examiner seen the exhibits? I think it might be helpful, before we have a ruling, for the examiner to see them.

Trial Examiner Dudley: I have a very good idea of what they are, from Mr. Walsh's description of them.

Mr. Walsh: Mr. Examiner, at this time I would like to introduce in evidence certain application cards of various individuals. These application cards are the cards signed by the individual members when they applied for membership in the Amalgamated Association of Iron, Steel, and Tin Workers of North America.

I will introduce them in three separate groups, or at least refer to them in three separate groups.

There are 84 cards which have a date on them prior to September 10, 1936. There are, I believe, 16—

Mr. Swiren: Do you want to identify that as a separate group, now?

847 Mr. Walsh: I beg your pardon?

Mr. Swiren: Do you want to identify that by an exhibit number?

Mr. Walsh: Yes. I will ask to have this marked for identification as Board's Exhibit No. 18.

(The documents referred to were thereupon marked Board's Exhibit No. 18 for identification.)

Mr. Walsh: I would like to do this, for the purpose of the record: I would like to withdraw the actual cards, after counsel has had an adequate opportunity to check them, and furnish a typewritten list showing the name of the person and the date upon which that person applied for membership in the organization.

The cards being permanent records of the organization, I would like to exhibit them, let counsel check them, and then substitute the typewritten list.

Mr. Swiren: What about making photostats? You could spread them out, and get eight or nine or ten on a page. That

will give us an opportunity to check the signatures, which a list would not.

Mr. Walsh: My thought was this: I can turn them over to you, and let you check them, and satisfy yourself—

Mr. Swiren: And then substitute a list?

Mr. Walsh: —and then substitute a list.

Mr. Swiren: All right.

848 Trial Examiner Dudley: Can you make photostats of those?

Mr. Swiren: We can do it, yes.

Mr. Walsh: You can do that, if you so desire.

Mr. Swiren: All right. Of course, I am not consenting to the admission of these exhibits yet.

Mr. Walsh: No.

Mr. Swiren: I want to see what all of the exhibits are.

Mr. Walsh: Board's exhibit No. 19 will be another group of cards, 18 in number, no one of which bears a date as to when the person whose name appears thereon applied for membership. So far as this group of cards is concerned, I will endeavor during the course of the trial to check up with the individuals and ascertain on what date they did join the union, and supply that information for the record.

I would like leave, after counsel has had an opportunity to check these, to withdraw the cards and substitute a list for that group.

(The cards referred to were thereupon marked Board's Exhibit No. 19 for identification.)

Mr. Walsh: Board's exhibit No. 20 will consist of a group of cards of the same nature as the last group, all of which cards are dated subsequent to the month of September, the last date, I believe, being March 11th. Most of these cards, an examination will show, were dated prior to February 17th.

849 (The cards referred to were thereupon marked board's Exhibit No. 20 for identification.)

Mr. Walsh: As to this exhibit, I would like to turn the cards over to counsel and permit them to check them, and substitute a typewritten list in the same manner as the others.

Mr. Swiren: Do you now offer the exhibits? —

Mr. Walsh: I now offer all of these exhibits in evidence.

Mr. Swiren: We object to the offer. I want to make my grounds perfectly clear. We think the cards ought to go into the record, but we think they ought to be introduced in the proper way.

Someone ought to identify them. We ought to know where they came from, and we should have some evidence as to authenticity. In addition to that, there ought to be such supplementary and complementary evidence as may be necessary to indicate the date of acceptance of those applications, and the extent to which any or all of them may now be in force, as far as membership or authority is concerned.

In other words, the whole picture ought to be presented instead of just a few cards offered by counsel. We ought to have an opportunity to examine the witness who testified to the authenticity of these records, and also examine the records which complement and supplement the cards, and bring them up to date.

I think they ought to remain as exhibits for identification only, and not be received in evidence until the remainder of the necessary evidence is presented.

Trial Examiner Dudley: I assume, Mr. Swiren, from what you said before, that these cards are part of the material for which you wanted a subpoena?

Mr. Swiren: That is part of it, yes.

Trial Examiner Dudley: So you really do want them in evidence, just as soon as we can get proper verification?

Mr. Swiren: I want verification, and also additional records which will bring these up to date, so that we know whether there were any changes, whether these dates are accurate, whether the memberships ended at any time, or whether they were rejected at any time.

I do not want these out of the record. I want the record complete. They all ought to go in. They ought not to hold back some of the records that are important.

Mr. Walsh: You really are not objecting to these, are you, Mr. Swiren?

Mr. Swiren: I am objecting.

Trial Examiner Dudley: You are really asking for more evidence in addition to these, are you not?

Mr. Swiren: I am asking that enough evidence be brought in before they are offered, to establish their authenticity, if they have any, and to show whether they were in force on the respective dates they suggest they were in force. We do not know. The cards cannot tell us.

We do not know where those cards were. We do not know about the signatures.

Trial Examiner Dudley: I will admit them as evidence, subject to consideration by the Board, of not only the cards

themselves, but of whatever additional evidence may later be given during the course of the trial which will verify the cards.

(The cards referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 18, 19, & 20.)

Mr. Walsh: What disposition will the examiner make as to my request to substitute a list of these cards with the dates on it, after counsel has had an opportunity to examine the cards and check them?

Mr. Swiren: As long as we have an opportunity to check them, and make photostats, we have no objection to that.

Trial Examiner Dudley: Very well. The motion is granted, on that condition.

Mr. Walsh: I will turn them over to you, then.

Mr. Swiren: All right.

Mr. Walsh: As soon as Mr. Lester Collins is available, he desires to enter his appearance as attorney for Lodge 66 in this case, such appearance being provided for by article 2, section 25, of the rules and regulations.

Mr. Swiren: Read that statement, please, Mr. Reporter.

I did not hear the first part of it.

852 (The record was read as above recorded.)

Trial Examiner Dudley: Have you any objection, Mr. Swiren?

Mr. Swiren: There has not been any appearance offered yet. So far as I know, Mr. Walsh just made a statement of general interest.

He has always told me that Mr. Collins is not his co-counsel, so I presume Mr. Collins will make his own application.

I might suggest that we take a short recess, until they complete the review of the appellate court hearing.

Trial Examiner Dudley: We will take a short recess pending the return of Mr. Keele.

(A short recess was taken.)

Trial Examiner Dudley: The Board will reconvene its hearing.

Mr. Swiren: I might say, during the recess I have had an opportunity to see some of these cards that were offered in evidence. I notice that some of them are cards of dead men, and others departed from this part of the country, or the employ of the company, for a considerable period of time prior to any of the problems that arose here.

I am wondering whether, under the circumstances, the examiner would not reconsider his ruling and ask that the offer

be accompanied by some evidence of the authenticity and present status of those cards.

Trial Examiner Dudley: Well, I assume, Mr. Swiren, 853 the cards at least indicate an application of membership as of the date they were signed.

Mr. Swiren: I do not know that they even do that. I found some of the cards were all in one handwriting. A number of them are in the same handwriting, so I assume that they were not signed by the various individuals; those were not, at least.

All the way through, I think there is about as complete a lack of evidence as to what portion of the cards are worth while and trustworthy as we could possibly have, and still have cards here.

Trial Examiner Dudley: My previous ruling was that they be admitted and be considered by the Board in connection with such supplementary evidence and testimony that might be given. I think that should stand. We will so consider them in the future, in connection with testimony such as you are mentioning now.

Mr. Swiren: I take it that my application for the reconsideration of the examiner's ruling is overruled?

Trial Examiner Dudley: Yes.

Mr. Walsh: May I proceed, Mr. Examiner?

Trial Examiner Dudley: Call your witness.

Mr. Walsh: Mr. Dreyer.

CLARENCE DREYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

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*Direct Examination.*

Q. (By Mr. Walsh) Will you state your full name, please?

A. Clarence Dreyer.

Q. You will have to speak up a little bit, Mr. Dreyer.

A. All right.

Q. What is your address?

A. 1833 Elisabeth Street, North Chicago.

Mr. Swiren: Speak up a little louder, please.

Trial Examiner Dudley: There are a lot of people who want to hear you. Keep your voice up, please.

Q. (By Mr. Walsh) You are presently confined to the county jail on an order of the Circuit Court of Lake County, are you not?

A. I am.

Q. You are appearing here in response to a subpoena by the National Labor Relations Board?

A. I am.

Q. You are appearing here of your own free will?

A. I am.

Q. As far as your present appearance is concerned?

A. I am.

Mr. Walsh: Mr. Examiner, Mr. Collins is still engaged in the other matter now going on in the Circuit Court. I will ask the examiner to ask the witness if he desires to claim 855 his privilege.

I think he understands what it is. I have explained it to him, and I think he understands what his privilege is.

Trial Examiner Dudley: Mr. Dreyer, do you wish to claim your privilege of immunity which is given to you under the Act, for any wrongful acts you may have committed about which you testify during this hearing?

The Witness: I do.

Trial Examiner Dudley: It is so granted.

Q. (By Mr. Walsh) Mr. Dreyer, I believe you were a member of the negotiating committee that called upon the company at various times?

A. I was.

Q. Were you a member of the committee that called upon the management of this company in July of 1936?

A. I was.

Q. Will you just tell the examiner in your own words what took place at that conference?

A. Well, there was four of us that were elected to go over to the office. There was Carl Swanson, John Kondrath, Ed Ruck, and myself.

The purpose we were going over there for was to ask for permission to post a notice on the bulletin board of a meeting we were going to have. We got over there, and we asked the management for their permission. They said they couldn't 856 give us that permission.

I just don't remember what was said, but anyhow the argument led into union and union was discussed. I guess the meeting must have lasted about an hour or so. Ed Ruck suggested we come over to ask permission to post the notices, and the company refused.

Q. What were those notices about?

A. Well, there was going to be a meeting of Lodge 66 that



was going to be held on August 5th. At this meeting the officers that had been elected were going to be installed. We wanted to post a notice of this meeting to notify all the employees of what was going to take place.

Q. Previous to this meeting, had the men in your department certain grievances against the company?

A. Yes.

Q. What were those grievances?

Mr. Swiren: I object to that. I do not think this witness ought to be brought in here to testify to stories he may have heard from other people, nor can I see any materiality, as to whether there were grievances or not.

Either the Act was violated, or it was not violated. Whether these men had any grievances, or thought they had any grievances, in the latter part of July has no materiality to the issues involved here. There is nothing in the pleadings to justify it. There is nothing in the Act to justify it. There 857 is nothing in the regulations even to justify it.

Trial Examiner Dudley: I think, Mr. Swiren, grievances, or beliefs that they had grievances, might well indicate, perhaps, and explain some of the actions taken by the employees in the forming of a union, and approaching the company and discussing with them the matter of posting the notices.

Mr. Swiren: There is no obligation on anybody's part to permit company property to be used for union organization purposes without the consent of the company.

Trial Examiner Dudley: That is not the point of the question.

Mr. Swiren: Therefore, whether the company refused permission had not any materiality. It certainly cannot be material, whether these men thought they had some grievances last July or not.

Trial Examiner Dudley: I will overrule the objection.

Mr. Walsh: Read the question, please.

(The question was read.)

A. Well, just prior to the time the union was started, they had two efficiency men come down the . It was our understanding they were there to improve machinery and improve the process of the work, and different things like that.

They were working in our department, and they had figured out ways they wanted us to work. They had cut down our rate of pay—

858 Mr. Swiren: Just a moment. We object to any sum-

maries of that kind. If he is permitted to go into this matter, he ought to say what was said, and by whom, so it will be susceptible of proper inquiry on our part.

Trial Examiner Dudley: I will ask the witness to be as specific as he can.

Q. (By Mr. Walsh) Mr. Dreyer, what department did you work in over there?

A. I worked in the cutting department.

Q. That cutting department does what?

A. It cuts tungsten disks.

Q. For contact points?

A. Yes.

Q. That is sometimes referred to as the contact cutting department, is it not?

A. Yes.

Q. Do you know the names of these efficiency men?

A. I cannot recall their names at the present time. I did know them, but I can't recall them.

Q. As a result of the studies that these gentlemen made, were there certain changes made in your work?

Mr. Swiren: That is objected to. This witness does not know—

Trial Examiner Dudley: He may answer, if he knows.

Mr. Swiren: Just a moment.

859 The Witness: Yes, there was.

Mr. Swiren: Just a moment. I think the examiner ought to hear my objection. The efficiency experts unquestionably did not report to this witness. Unless he knows what they reported, or upon what basis any changes were made, he ought not to be permitted to speculate.

Mr. Walsh: I am afraid you do not understand the question.

Mr. Swiren: Yes, I do.

Trial Examiner Dudley: Read the question, Mr. Reporter, please.

(The question was read.)

Trial Examiner Dudley: He may answer.

A. There was.

Q. (By Mr. Walsh) Did these efficiency men say anything to you about the amount of work you were doing, and the amount the company expected you to do?

A. They did.

Q. What did they say to you?

A. Well, they figured out that— I don't know how to explain it.

Q. Just explain it in your own way, Mr. Dreyer.

A. We were put on what they call the standard. The standard they put us on was the amount of production we had been turning out daily. In order to make the money 860 we were making, we had to turn out half again as much production as we were. That is what our grievances were about.

Q. Now, what, in figures, was the standard that you had been working on?

A. Well, our average day's work standard was around, between 12,000 and 13,000 disks a day.

Q. In order to make the same rate of pay, you had to produce more, did you?

A. All the way from 15,000 to 16,000 disks a day.

Q. Did you attempt at any time to discuss this matter with the management of the company?

A. We did.

Q. Who did you try to see, or who did you talk with?

A. The plant superintendent, Mr. Luther Henry.

Mr. Swiren: Speak louder, so I can hear you.

The Witness: The plant superintendent, Mr. Luther Henry.

Q. (By Mr. Walsh) What did Mr. Henry say?

A. We called him in our department. We asked the foreman if we could talk to him. He arranged for the superintendent to come in and see us.

We argued with him about the way they were cutting our wages. One thing led to another; we were all men that had worked there from 15 to 20 years, and he practically told us all we had was a job, and that our length of time we had put in with the company didn't mean nothing.

861 He said that our job was only worth so much an hour, and if we thought we could find anything better we should take it.

Q. How long have you worked for this company, Mr. Dreyer?

A. Approximately 17 years.

Q. Now, were you a member of the committee that called upon the management about September 10th?

A. I was.

Q. Will you tell us who was there representing the management?

A. Mr. Anselm.

Q. By the way, who represented the management in that meeting in July, do you remember?

A. There was Mr. Aitchison, Mr. Troxel, Mr. Dow, and Mr. Henry. That is all I recall.

Q. Now, getting back to this meeting of September 10th, will you tell the examiner just what took place on that day?

A. Well, we had drawn up an agreement that we wished to present to the company. This agreement was drawn up by departments. Every department had a meeting, and each department's agreement was put into one agreement.

We were selected to take this agreement over to the office. We went to the office and met Mr. Anselm. I believe Edward Ruck was the spokesman. He handed Mr. Anselm the contract, and Mr. Anselm read it.

He sat there for a few minutes and didn't say nothing.

Pretty soon he told us the contract was a fair contract; 862 that in time the company would be able to give us everything that was in that contract, except union recognition. If I remember rightly, we discussed the different things that were going on around the plant.

Mr. Anselm had just come back, and he asked every man from his own department what seemed to be the trouble in that department. We discussed matters of that sort.

Q. Was there anything at that time said about the representation plan of the American Steel and Wire Company?

A. Yes, there was.

Q. What was said at that time?

A. Well, Mr. Anselm had some copies of that plan they had at the wire mill. He gave us some of them copies. We talked about that, and he asked us if we would take them back to the plant and show them to the employees.

He said that he could give us a contract as good as that, or as good as the one we presented to him, if not better.

Q. I will hand you what has been marked Board's exhibit No. 13. I will ask you if that is one of the pamphlets that he handed out on that date.

A. Yes.

Q. I will hand you now what has been marked Board's exhibit No. 15. I will ask you what that is, and how that came into the possession of the men?

A. This is a copy of—we received that from the management. Each individual received one of these, in the 863 plant, in the interoffice correspondence envelope.

Q. Do you remember about when that was?

A. I can't remember the day. It was just a few days

after we had presented that other contract, and he had gave us the employees' representation plan.

Q. Well, was that everything that was said and done on September 10th, that is, relative to the meeting between yourselves and the company?

A. I don't recall anything else.

Q. Were you a member of the committee that represented the union in a conference that took place about the 21st of September?

A. I was.

Q. Who was there from the company?

A. Mr. Anselm.

Q. Was there anybody with the committee besides the members of the union?

A. There was Carl Swanson, Ed Ruck, John Kondrath, myself, Frank Latz, and Meyer Adelman.

Q. Will you tell the examiner just what happened at that conference?

A. Well, I was told that morning that there was going to be a meeting of the officials of the company right after dinner, and that we should be there at 1 o'clock. So, at that 864 time, we started from our individual departments, and headed for the office. We all met out in front of the office, and we went in in a group.

When we entered the office I saw William Schultz, and he asked us what we wanted. We told him we wanted to see Mr. Anselm, and he showed us into Mr. Anselm's office. Mr. Anselm was not in when we entered, but he came in a few minutes after we had been there.

Ed Ruck introduced Mr. Adelman to Mr. Anselm. Then Mr. Anselm inquired about how Mr. Adelman had gotten in there. Ed Ruck explained to him how he got in there, and Mr. Anselm told Mr. Adelman he could get out, that he could go out in the outer office and enter in the proper way.

There was quite a few things said there that I don't recall.

Q. What did Mr. Anselm say, if anything, regarding recognition of the union?

Mr. Swiren: That is objected to. The witness said that there was not anything more said that he could remember. I do not think Mr. Walsh ought to do the testifying.

Trial Examiner Dudley: Read the answer to the last question, please, Mr. Reporter.

(The answer was read.)

Trial Examiner Dudley: The witness may answer.

Mr. Walsh: Read the last question, please, Mr. Reporter.

865 (The question was read.)

A. After Mr. Adelman had left, and gone out in the outer hall, he told us he was willing to talk to us any time as employees, but that he wouldn't have any outsiders, as he called them, in his talks.

Then there was some discussion about the meeting we were supposed to have, and I understand that—well, I don't know. There was a mixup there some way. He claimed there was not supposed to be a meeting. We were informed there was.

It finally ended up that there wasn't any meeting. We went back to the plant and went to work.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren) Mr. Dreyer, you referred to a meeting with the management in July 1936. Can you place that for us, during the month? What part of the month was it in?

A. The last part of the month.

Q. The union was formed; that is, Lodge 66 was formed about the 4th of July, is that right?

A. Sometime around that, yes.

Q. Your grievances, you testified to, occurred before that, and were things that led up to the formation of the Lodge, is that right?

A. That was a short while before.

Q. When would you say that the grievances arose with 866 respect to the efficiency men, Mr. Dreyer? Would June be a correct approximation?

A. I believe the day they came in there, and it was explained to us what they was doing—I believe the date was June 8th.

Q. That was put into effect on—

A. June 8th.

Q. The program was put into effect about that time?

A. Yes.

Q. Beginning on the 8th?

A. Yes.

Q. How long did that reduction in your compensation last?

A. As nearly as I can remember, Mr. Henry asked us to try it out for a few days and see how it worked, which we did. I can't recall how many days it was, how long it was.



Q. Would you say that you worked under that system that the efficiency men proposed for as long as a week?

A. Yes, I think so.

Q. Would you say it was as long as 2 weeks?

A. I don't recall.

Q. You would not say it was as long as a month, would you?

A. No. It wasn't that long.

Q. After Luther Henry told you to try it out, you came back and told him it was not working satisfactorily, is that right?

A. Yes.

Q. Then he made a change, and restored the original 867 arrangement, is that right?

A. No.

Q. What did happen?

A. That is when he told us that all we had was a job.

Q. He refused to make any change?

A. He did.

Q. That arrangement that the efficiency men installed continued from then on, is that right?

A. It went on for a few days, and then we had another talk with him.

Q. What happened during that conversation?

A. Well, it was right after that that the union started—

Q. No, no. Tell me what happened when you talked to Luther Henry the second time.

A. The second time, the efficiency men had already been let out.

Q. What did you tell Luther Henry?

A. We asked him about making an adjustment in our wages, and he told us he would see what he could do.

Q. Did he tell you then that all you had was a job?

A. Not the second time.

Q. Did he tell you that you could not have any adjustments?

A. Not the second time.

Q. When was that meeting, by the way, Mr. Dreyer?

A. That was—

868 Q. That was in June, too, was it not?

A. I believe it was.

Q. Did anything happen with respect to restoring your cuts?

A. Yes. They gave us a little raise. I can't recall just what it amounted to.

Q. Right after you saw Luther Henry?

A. A few days after that.

Q. How did it work during July? Was your compensation better during July?

A. If I recall, we had one other talk with him—

Mr. Swiren: No, no, no. You did not get my question. I did not ask you about any conversation.

Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: Mr. Examiner, I object to this line of inquiry as not being material to the issues.

Trial Examiner Dudley: I will overrule the objection. I will permit Mr. Swiren to bring out what he can through this questioning.

Mr. Swiren: We want to bring out all the facts, not half of them.

The Witness: Repeat the question, please.

Mr. Swiren: Read the question.

(The question was read.)

A. It was better than what the efficiency men had set down.

869 Q. (By Mr. Swiren) Well, all of the reductions were subsequently adjusted, within about 30 days, were they not?

A. No.

Q. No?

A. They never were adjusted to what they were before.

Q. Were any of the adjustments that were made, made retroactive? Do you understand what I mean?

A. (No answer.)

Q. Were they dated back to the date the change was made?

A. The first one was, but the second one was not.

Q. The first one was dated back, so you made up some of the amount that had been cut?

A. Yes.

Q. Is that right?

A. Yes.

Q. Do you recall what percentage was made up, and what percentage was not?

A. I can't recall just what it was.

Q. If I told you your compensation during July 1936 was

almost double what it was during June 1936, would you say that was incorrect?

A. That would be wrong.

Q. If I were to say the same thing about your compensation so far as June and May 1936 were concerned, would you still say I was wrong?

870 A. I don't understand you.

Mr. Swiren: I will withdraw the question.

Q. (By Mr. Swiren) Did you earn more money during July 1936 than you did during May and June 1936?

A. No.

Q. You did not?

A. I can't tell you—I can't answer that question, because I don't know how we worked in May.

Sometimes we weren't busy. We stayed home for a few days.

Q. What about June? Did you earn more during July than you did in June?

A. I can't recall.

Q. You are sure you did not earn  $1\frac{1}{2}$  or 2 times as much, is that right?

A. For the amount of time I put in, if I remember rightly, I think it was less.

Q. How about August? Did you do better in August than you did in June or May?

A. I can't recall.

Q. During the fall and winter of 1936 and 1937, did your production rate go down in the cutting department, the production rate per man?

A. I don't understand your question.

Q. Did each individual man start cutting less disks during November, December, January, and February?

871 A. No.

Q. You think production stayed up?

A. Production gradually went up in the fall.

Q. Now, the organization, Lodge 66, made no effort to reduce the quantity of disks cut per man, did they?

A. No.

Q. There was no concerted effort made to cut down production in that department, was there?

A. I don't know what you mean.

Q. Well, did you men get together and decide that you were producing too much, or too little, and change the production rate at all?

A. We didn't. We always done our work the way we had been used to do it.

Q. There was no change, then, during that period; you are sure of that?

A. When these efficiency men set the standard—

Q. No, no. Never mind the efficiency men. I am talking about the production during November, December, January, and February. That ought to be easier to remember than what happened last July.

A. Our production, as near as I can remember, was higher than what it had been previously.

Q. After your second conference with Luther Henry, did you make any further complaint about piece rates?

872 A. Yes.

Q. When, and to whom?

A. To Luther Henry.

Q. When?

A. I can't remember just how many days later, but it was shortly after the other.

Q. There was another adjustment after that, then, was there not?

A. There was.

Q. Did you make any complaint after that?

A. Yes.

Q. When?

A. About a week after that.

Q. Were there any adjustments after that date?

A. There has been no further adjustments after that third time.

Q. That third time was when?

A. That third time was when they refused us any other adjustment.

Q. What month was that in?

A. I believe it was in August. I am not sure.

Q. August 1936. You had no adjustments from that time on until February 17th, when you left your work, is that right?

A. There was no adjustment.

Q. You are sure of that?

873 A. Yes.

Q. There is no doubt in your mind at all?

A. As near as I can remember.

Q. You were interested in what rates—

A. I was.

Q. —you were getting for your work, were you not?

A. I was. I recall on one job—when they adjusted these prices, there was one job they had failed to make any adjustment on.

I remember talking to Mr. Anselm about that one job.

Q. He adjusted it?

A. He adjusted that job, so compared with the others.

Q. He ran the adjustment back, did he not?

A. No.

Q. You do not know about that, or do you?

A. I don't recall that.

Q. When was that?

A. I can't recall the day, or the time.

Q. But there was no general adjustment, after—

A. No.

Q. —August 1936, as far as you know?

A. Not that I recall.

Q. You would know if you had an adjustment in your rate, would you not?

A. I can't remember dates. All I can recall is there was two adjustments made after the efficiency men had put us on that standard.

Q. Those were made right after the change had been made cutting down on your standard, is that right?

A. Yes.

Q. That is, within 30 days, or thereabouts? Is that right?

A. I don't remember how far apart they were, or the number of days.

Q. It was within two months, any how, is that right?

A. I should say that, yes.

Q. How many disks did you say you were generally cutting per day before the efficiency men came in?

A. That is hard to say. There was different jobs, and we cut different amounts of disks.

Q. You gave a figure to Mr. Walsh. Can you give me one?

A. Well, on a 150-diameter rod, I think we cut between 12,500 and 13,000 disks.

Q. Per man, per day?

A. Yes.

Q. Are there any other sizes that you remember?

A. I can't recall the exact figures.

Q. Do you know how many disks were being cut per man or per woman, by the operators in other plants?

A. Only what we were told by the management.

Q. You did not have any information of your own?

875 A. No.

Q. You do not know whether that is high or low, compared to other plants?

A. As far as myself personally, I can't say.

Q. All right.

A. Because I hadn't seen or heard.

876 Q. You do not know whether the percentage of rejects that you men had, rated high or low compared with other plants, do you?

A. The only way is what some one had told me.

Q. Do you know whether—strike that out, please.

In cutting your discs you use a wheel, a cutting wheel, is that right?

A. Yes.

Q. One of the problems in cost, is how many cutting wheels are consumed for a given number of discs, is that right?

A. Yes.

Q. You do not know how many wheels you used per thousand, compared to the operators in other factories, do you?

A. Only what we were told.

Q. By the efficiency men?

A. By the efficiency men, and the management.

Q. Now, going to the meeting of September 10th, were you an officer of the union at that time?

A. I was.

Q. What office did you hold?

A. I held the office of vice-president.

Q. You had been elected vice-president at the inception of the union, is that right?

A. Yes.

Q. Are you still vice-president?

877 A. No.

Q. When did you stop holding that office?

A. Shortly after the meeting of the 21st with the company, or the proposed meeting.

Q. Did you resign voluntarily?

A. Yes.

Q. Was there any problem about the acceptance of your resignation?

A. No.

Q. It was promptly accepted?

A. Well, they asked me if I wouldn't hold that office, and I told them I didn't care for it.



Q. Who asked you?

A. The members.

Q. Did Mr. Adelman speak to you about that?

A. I believe he did.

Q. Do you know what he said?

A. I don't recall what it was.

Mr. Walsh: Mr. Examiner, I fail to see the materiality of this particular line of inquiry.

Mr. Swiren: We have just been inquiring—

Mr. Walsh: I think it should be relevant to some issue.

Trial Examiner Dudley: What are you striving at, Mr. Swiren?

Mr. Swiren: I suggest that you confine your remarks 878 to objections to specific questions, so we can have something to talk about in common, instead of just saying "line of inquiry".

Q. (By Mr. Swiren) At the meeting of September 10th, did you receive a copy of the employes' representation plant of the American Steel & Wire Company which appears in this record as Board's exhibit No. 13?

You received personally a copy of it, is that right?

A. Yes.

Q. Did all the other members receive copies?

A. All the members that was on that committee in the office, yes.

Q. Each one received one copy?

A. They received more than one.

Q. They received a number of them?

A. A dozen or so.

Q. A dozen or so of these little blue books?

A. Yes.

Q. Did anybody ask for more than one copy?

A. I don't recall that. We were asked to take them back to the employes.

Q. Well, after Mr. Anselm showed the committee one copy, did not one member of the committee say "Have you any more copies we can have?"

A. I don't recall that.

879 Q. You would not say that was not said, would you?

A. I don't recall.

Q. It may have been said, is that right, so far as your memory is concerned?

A. I said, I don't recall.

Q. What I am trying to find out whether you are certain

it was not said. You just do not have any memory on the subject, is that right?

A. I don't know whether it was said, or whether it was not said. It was not said to me.

Q. How many were in the room as the committee?

A. Four.

Q. So you would hear it; it would be addressed to the committee, is that right? Any remarks made by the management would be addressed to the committee?

A. Not necessarily. I was looking the thing over and probably if somebody said anything, I wouldn't be paying any attention.

Q. You may have been engrossed in reading the pamphlet itself, is that right?

A. That is right.

Q. Do you know whether anybody asked, anybody in your committee asked for more copies of the employes representation plan, a copy of which has been introduced as Board's exhibit No. 15?

880 A. No.

Q. You do not know whether those were asked for?

A. I don't think they were, because each individual received one.

Q. They were all right there; a large number of copies were available, is that right?

A. They were brought over to the factory, and handed to us by our foreman.

Q. I am talking about the meeting. Were they handed to you at that meeting?

A. The one you just showed me?

Q. Yes.

A. No.

Mr. Swiren: The witness is now referring to Board's exhibit No. 15.

The Witness: They were handed to us in the inter-office correspondence envelope. Each employe received it from his or her foreman.

Q. (By Mr. Swiren) That was not handed to you at the office meeting on the 10th?

A. No.

Q. Was a copy shown to the committee?

A. Not of that one, that was typewritten, no.

Q. You say "No"?

A. No.

881 Q. Now, going on to the meeting of September 21st, your committee of four or five men and Mr. Adelman entered the office building; you came into the lobby first, is that right?

A. That is right.

Q. Did you stop at the information window?

A. No.

Q. You did not stop there?

A. We were in the hall and Schultz was standing there in the hall when we came in.

Q. Then you opened the door going toward Mr. Anselm's office, is that right?

A. No. We talked to Mr. Schultz, and he lead us in.

Q. You passed through Mr. Schultz' office before you reached Mr. Anselm's office, is that right?

A. Yes.

Q. That is separated from the lobby by a door?

A. That is right.

Q. You opened that door, and walked in, and Mr. Schultz was there?

A. Mr. Schultz was in the lobby when we came in.

Q. Oh; Mr. Schultz was in the lobby?

A. Yes.

Q. Did you tell him what you wanted? Did you tell him you had an appointment with Mr. Anselm?

A. Ed. Ruck was the spokesman. I believe he did.

882 Q. He said he had an appointment with Mr. Anselm, is that right?

A. I don't recall the words he said.

Q. Is that correct, in substance?

A. I know he asked to see Mr. Anselm.

Q. Did he say he wanted to see Mr. Anselm, or did he say he had an appointment to see Mr. Anselm?

A. I don't recall.

Q. You are not sure?

A. I don't recall.

Q. You do not personally know whether or not, there was an appointment made with Mr. Anselm, do you?

A. I was informed there was.

Q. You personally did not make it, or hear it made, did you?

A. I didn't make the appointment myself, no.

Q. Who told you it was made?

A. The other members of the committee.

Q. At the meeting Mr. Anselm said he knew nothing about an appointment, is that right?

A. That is right.

Q. By the way, at the meeting of September 10th, was there anything said about a closed shop?

A. Not that I recall.

Q. Was there anything said about the check-off system?

A. I believe there was some discussion of that sort.

883 Q. Do you recall Mr. Anselm saying that the company would not require any employee to join the union and pay dues to the union if he did not want to, or words to that effect?

A. He might of; I can't recall, however.

Q. Directing your attention to February 17th, 1937, Mr. Dreyer, did you participate in a meeting of the bargaining committee that was held in the Chemical Building?

A. I didn't.

Q. About 2:15?

A. I didn't.

Q. You did not?

A. No.

Q. You were not a member of the group that had called on Mr. Anselm, is that right?

A. On the 17th?

Q. Yes, sir.

A. No, I wasn't.

Q. Where were you working on that day?

A. In the cutting department.

Q. On what building?

A. Building 3.

Q. Did anything unusual happen that day in Building 3?

A. I don't understand your question.

Q. Did anything out of the usual conduct of the business occur in building 3?

884 Did you go on with production all day?

A. Until 2:30.

Q. What happened at 2:30?

Trial Examiner Dudley: Mr. Swiren, I might call your attention to the fact that there was no testimony on direct examination about anything that happened in February, 1937.

Mr. Swiren: I understand.

Trial Examiner Dudley: I will let you go ahead, if you want to.

Mr. Swiren: I understand that all right.

**Trial Examiner Dudley:** It is considerably beyond the scope of the direct examination.

**Mr. Swiren:** I do not know whether this witness is coming back. The problem of getting witnesses for the respondent seems to be a very difficult one.

**Trial Examiner Dudley:** I shall let you go ahead, although you realize it is considerably beyond the scope of the direct examination.

**Mr. Swiren:** I do not know how much of this will be beyond the scope of the direct examination.

**Mr. Walsh:** I have not raised any objection.

**Trial Examiner Dudley:** You may proceed.

**Q. (By Mr. Swiren.)** What happened that afternoon?

**A.** Well, the rest of the afternoon the plant shut down.

**Q.** Did the plant superintendent come in and say that  
885 production should stop and the plant shut down? Is that right?

**A.** (No answer.)

**Q.** Did you shut down your machine?

**A.** I did.

**Q.** And the men around you shut down their machines?

**A.** They did.

**Q.** How did you happen to do that? Did anybody tell you  
to?

**A.** Well, in our department there is a blower, a big blower that takes the dust out. It makes quite a bit of noise. When that shuts down, naturally everything quiets down, and everybody wants to know what is wrong; everybody wonders what is wrong, when everything quiets down.

**Q.** Wait a minute.

**A.** Yes.

**Q.** The blower shut down that afternoon, is that right?

**A.** Yes.

**Q.** Who shut it down?

**A.** I don't know.

**Q.** You did not see it shut down?

**A.** No.

**Q.** Then, you shut down your machine following that, without talking to anybody?

**A.** I did.

**Q.** You did not know what was going on?

**A.** I did not.

886 **Q.** Then, what happened?

**A.** I don't recall. There was so much confusion, it is hard to remember things like that.

Q. Did you learn that afternoon that some of the men were planning to take over possession of buildings 3 and 5?

A. There was no discussion, as far as I know, about taking possession of any building.

Q. Did you hear what any of the men planned to do that afternoon with respect to buildings 3 and 5?

A. What was the question?

Mr. Swiren: Read the question.

(Question read.)

A. I didn't.

Q. (By Mr. Swiren.) Have you since found out?

A. Naturally; I was in the buildings during the strike.

Q. What did you find out that they planned to do?

A. I don't know what they planned to do. All I know is what did happen.

Q. The fact is, you and some others did take charge of buildings 3 and 5, and you held them from February 17th to February 26th, 1937, is that right?

A. I was in the buildings at that time.

Q. Was production proceeding in a normal fashion during that period?

A. No.

887 Q. Was there any production during that period?

A. Not that I know of.

Q. You remained in building 3?

A. Yes.

Q. During that entire period?

A. Yes.

Q. Day and night?

A. I did.

Q. You slept there, and ate there, is that right?

A. I did.

Q. How many other men were there?

A. Oh, approximately 50 men.

Q. They all stayed in there, and slept and ate in building 3?

A. Yes.

Q. Do you normally sleep in building 3?

A. No.

Q. Do you normally have all of your meals in building 3?

A. No.

Q. Were any of the women normally employed in building 3 there during the period from February 17th to February 26th?



A. I don't understand your question.

Q. There are women employed in building 3, are there not?

A. Yes.

Q. There are quite a number of them?

888 A. Between 35 and 40.

Q. Were any of those women in the building during that period from the 17th until the 26th of February?

A. No.

Q. There are some foremen normally in the building too, are there not?

A. Yes.

Q. Did they remain in the building during that period?

A. No.

Q. Were the doors barricaded during that period?

A. The doors were locked.

Q. From the inside?

A. Anybody who wanted to open them could open them.

Q. Anybody who wanted to could open them, is that right?

A. Yes.

Q. During that whole period?

A. That is right, as far as I know.

Q. Were you there on the evening of February 17th when I came to those buildings?

A. I don't recall you being there.

Q. You did not see me go into the building, did you?

A. I ain't never seen you until in this court.

Q. You did not see me inside of the building, inside of building 3, then?

A. No.

889 Q. Did you ever see the sheriff or his deputies, go into building 3?

A. I never seen them in the buildings, no.

Q. You know they tried to get in, do you not?

A. I do.

Q. But they did not succeed?

A. I don't know.

Q. They did not succeed during the time you were in that building, so far as you ever saw, did they?

A. I didn't see.

Q. Do I understand you to mean that you and the others in the building did not want to keep the company from taking possession of building 3 and keeping the sheriff from coming in?

Is that right?

A. I don't understand that question.

Q. Were you willing to have the company take over building 3 and send you home, during that period?

A. I can't answer that question. I don't know—

Q. Can you answer as to whether you and the others there wanted the sheriff to come in and send you home?

A. You are talking about what we wanted. We wanted to get together with the company and talk things over. We were in there on a protest. That is the only reason I was in there.

Q. Did you know the sheriff was trying to get you to go out?

890 A. I seen him out in the yard, yes.

Q. You knew what he was there for, did you not?

Mr. Walsh: I object, Mr. Examiner. I see no materiality to this line of inquiry.

Mr. Swiren: It certainly is material under the proceedings.

Trial Examiner Dudley: Mr. Swiren, how much longer do you want to go on?

Mr. Swiren: With this witness? I do not know. It depends on his answers.

Trial Examiner Dudley: I mean, how long do you wish to continue along this line?

Mr. Swiren: I want to exhaust this, and if the Examiner does not want me to do it in this hearing, I want to request my subpoenas again. I have been denied subpoenas on the theory of the Board that most of these witnesses will appear and be called by the Board. I am, therefore, proceeding on the assumption that the intent of the Board is that I avail myself of the presence of these witnesses when they are brought before the Examiner by the Board itself.

Mr. Walsh: I think, if the Examiner please, that counsel has by this witness and other witnesses adequately demonstrated what the facts were. Now, if it is his purpose to develop that, I think he has done it. He has accomplished his purpose.

891 Mr. Swiren: Mr. Walsh, will you stipulate as to the facts? Are you willing to stipulate as to the facts? We asked you about that before.

If Mr. Walsh is not willing to stipulate, we reserve the privilege of producing whatever proof we feel is necessary to establish our case. I do not think we ought to be guided by Mr. Walsh's judgment as to whether we have produced enough

or not enough. If Mr. Walsh feels that the evidence is clear, he ought to stipulate, and save everybody's time.

Trial Examiner Dudley: You have also introduced copies of the orders of the Circuit Court, Mr. Swiren.

Mr. Swiren: If there is a stipulation and agreement as to the facts, we do not have to proceed along that line.

Trial Examiner Dudley: You may proceed. I suggest you cut it as short as you can.

Mr. Swiren: What was the last question, Mr. Reporter? (The question was read.)

Q. (By Mr. Swiren) Answer that, please.

A. Well, in my own mind, I imagine he was there to try and get us to go out.

Q. You did not come out until the morning of February 26th, is that right?

A. That is right.

Q. Did you hear about the discharge of the men on the evening of the 17th, a few hours after you sat down?

892 A. I don't recall that.

Q. When did you first hear that on the evening of February the 17th, the company discharged the men who were in buildings 3 and 5?

A. I don't know. It was sometime during the evening. I heard different men saying that they fired us, and that we were going to be fired, or something. I didn't pay much attention to it.

Q. You heard that during that evening of February 17th in the plant, is that right?

A. I heard something about "fired". I don't know whether it was "going to be", or "are", or what.

Q. Did you ask anyone?

A. No, I never inquired.

Q. Have you since inquired?

A. I never made any inquiries of nobody, no.

Q. Prior to the time you participated in taking over building 3, on February 17th, were you ever discharged?

A. No.

Q. You did not conceal the fact you were a member and an officer of Lodge 66, did you?

A. I didn't.

Q. You appeared at some of the conferences with the company officials, so they knew it, is that right?

A. Yes, and at those conferences, we told them who we were.

893 Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment, Mr. Dreyer.

Mr. Swiren, I think in your answer you set out that you offered this man employment, and he refused to take it. Do you want to bring that out?

I do not care whether you do or not.

Mr. Swiren: I can tell in just a minute. Yes, I think that ought to be completed while we have the witness on the stand —no, I think we will prove that in our own case.

The Examiner may ask about that, if he desires. I think we will prove that in our own case.

Mr. Walsh: What page and what paragraph is that, your Honor?

Trial Examiner Dudley: I do not have it by pages; it is paragraph 10, sub-section B.

Mr. Swiren: That is in answer to paragraph 7 of the complaint.

Trial Examiner Dudley: Sub-section B of the answer.

Q. (By Mr. Swiren) After the sit-down ended and you were evicted from building 3, were you asked to return to work at the Fansteel plant?

A. I was asked to sign a new application for a job. They said that they might be able to find something for me to do.

Q. Did you do that?

A. I didn't, because I considered myself an employee  
894 of Fansteel.

Q. Did you say you did not want to come back to work at that time?

A. I didn't say that.

Q. You did not?

A. I didn't say I did not want to come back to work, no.

Q. Who did you talk to, by the way?

A. Mr. Henry.

Q. Did Mr. Henry say that you would have to fill out a new application before you could come back to work?

Is that right?

A. He asked me to fill out an application for a job. He said he might be able to find something for me to do.

Those are his exact words.

Q. Did he tell you could not come back unless you filled out an application?

A. He never told me in that way. Naturally, if he told

me to fill out an application for a job, that is the only way I could take it.

Q. You understood that prior to that time you had been discharged by the company, on the evening of the 17th of February, is that right?

A. That seemed to be the idea, yes, sir.

Q. You said you would not fill out an application?

A. I wouldn't fill out a new application, because I  
895 figured I was an employee of Fansteel.

Q. And you told him that?

A. Yes.

Q. Did you tell him you wanted to go right back to work?

A. There was no discussion of that nature, no.

Q. You did not tell him you wanted to go back to work? You did not tell him anything about that, is that right?

A. I don't recall.

Q. Did you ever go back there again and present yourself to anyone for employment?

A. Not for employment, no.

Q. What did you go back there for?

A. I came back to get my pay.

Q. Did you ask for reinstatement at that time, from anyone?

A. No.

Q. Well, did you come in and try to go to work?

A. No.

Q. Did you?

A. No.

Q. As a matter of fact, each morning you reported at the headquarters of Lodge 66 for a considerable period, after you were out of building 3, is that right?

A. Not very long.

Q. Almost every morning?

A. It was not compulsory.

896 Q. Well, you came there frequently and signed a roster in the mornings, did you not?

A. I did.

Q. Then, did you go out on the picket line?

A. Sometimes.

Q. During that period you did not try to come in and resume your duties?

A. It would not have done me any good. I don't understand that question.

Q. Did you, or did you not, go in and present yourself and try to do your work during that time?

A. The only time I presented myself there was to get my personal belongings, and my pay.

Mr. Swiren: That is all.

*Redirect Examination.*

Q. (By Mr. Walsh) Mr. Dreyer, do you know whether a committee from the union went to see the management after the plant reopened and asked certain things from the management?

Mr. Swiren: A committee of what?

Mr. Walsh: A committee of the union.

The Witness: Yes, there was on two occasions, that I remember.

Q. (By Mr. Walsh) You were not on that committee, were you?

A. No.

Q. Do you know what the committee asked of the management?

897 Mr. Swiren: That is objected to. The fact is, they presented a letter. This man was not there, and does not know anything about it. There was an instrument in writing. What somebody told him ought not to be gone into here.

Let the men who attended the meeting appear, or produce copies of the instruments that were presented and considered.

Mr. Walsh: I will withdraw the question.

Mr. Swiren: I think you should.

Mr. Walsh: That will be all.

Trial Examiner Dudley: Mr. Dreyer, I would like to ask you one or two questions, about your method of pay in the early months of 1936.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) Were you paid on an hourly basis, or piece-work basis?

A. A piece-work basis.

Q. A piece-work basis?

A. Yes.

Q. How long were you paid on a piece-work basis?



A. On that job it has practically been piece-work since they have done that kind of work. When we first started we were on a day basis.

Q. Were you paid on a piece-work basis up until February 17th, 1937?

A. Yes.

898 Mr. Swiren: I think I can clear up what the Examiner has in mind. That department, and possibly one or two others had had piece work as a basis for compensation. That was abolished when the plant was restored to the company, and reopened, so that all employees would be on an hourly basis, other than those that were on a monthly basis.

There is no piece work.

Mr. Walsh: Then, the persons who previously had been on a piece work basis are now on an hourly pay basis, is that correct?

Mr. Swiren: I am referring to those who are working for the company now, and who worked for the company prior to February 17th, in these particular positions.

Mr. Dreyer is not on any basis.

Mr. Walsh: I am just trying to find out whether all of those jobs went on the hourly basis.

Mr. Swiren: The piece work jobs were translated into hourly jobs.

Mr. Walsh: I see.

Trial Examiner Dudley: Does anyone have any more questions to ask of Mr. Dreyer? Do you, Mr. Walsh?

Mr. Walsh: No.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: Do you wish to call Mr. 899 Aitchison now?

Mr. Walsh: Shall I start in with him now or do you want to adjourn for lunch now?

Mr. Swiren: Go right ahead.

Trial Examiner Dudley: Very well; proceed, Mr. Walsh.

Mr. Walsh: Take the stand, please, Mr. Aitchison.

ROBERT J. AITCHISON, recalled as a witness on behalf of the National Labor Relations Board, having been previously sworn, further testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Aitchison, did you produce certain correspondence in response to a subpoena, that is, correspondence and memoranda relating to your dealings with the National Metal Trades Association?

A. I have them in my bag right there.

Q. Would you get that, please?

A. Yes.

Q. Mr. Aitchison, on what date did you first contract the National Metal Trades Association?

A. Early in August.

Q. August, 1936?

A. Yes, early in August.

Q. At that time you filed an application for membership in that organization, did you not?

A. No. I filed it a little later.

900 Q. When did you file your application for membership?

A. August 17th, 1936.

Q. August 17th, 1936?

A. Yes.

Q. Was that application for membership ever passed upon by the National Metal Trades Executive Committee?

A. It was passed upon in April, 1937.

Q. Then, you were notified you had been elected to membership in that association in April?

A. April 14th, 1937.

Q. Is that when you got the notice?

A. Yes.

Q. Do you know whether the National Metal Trades Association Executive Committee actually passed upon it at a date earlier than that or not?

A. I understand they passed on it on the 31st of March, 1937.

Q. Then you are not sure just when it was that they did pass upon it, is that right?

A. They say in their letter that they passed on it on March 31st, 1937.

Q. If their minutes indicated they passed on it at another date, you would not know that, would you?

A. I have not seen their minutes, no.

Q. I believe you obtained from the National Metal Trades Association a man by the name of Johnstone to work in 901 your plant.

What date did he go to work for you?

A. August 18th.

Q. How long did he continue to work for you?

A. He was discharged at noon, December 1, 1936.

Q. What was the reason for his discharge?

A. I understood he had some personal troubles at home. It interfered with his duties in the tool room, and the foreman of the tool room recommended that he be let out.

Q. The foreman recommended that he be discharged?

A. Right.

Q. What were his duties in the tool room?

A. He worked on different work which the foreman assigned to him.

Q. What was his trade?

A. Toolmaker, as I understand it.

Q. Do you know whether he had had any experience relative to plant production?

A. Yes.

Q. Was he represented to you to be an expert in the field of plant production problems?

A. Yes.

Q. Was he represented to you to be an expert in the efficiency of plant supervision?

902 A. Yes.

Q. Was he represented to you to be an expert in the efficiency of tool and machine equipment?

A. Yes.

Q. Was he represented to you to be an expert in the matter of morale of employees?

A. Well, there was no expert representation on that.

Q. Was he represented to you to be an expert in shop working conditions?

A. Well, anyone who has worked in the shop for many years would understand that.

Q. Was he represented to you to be an expert in all other factors reflected in the prevailing rate of production?

A. No.

Q. He was not?

340 *Witnesses for National Labor Relations Board.*

A. No.

Q. I notice by your answer that you allege that for these several purposes I have just mentioned, this man was employed to observe these matters and report to you upon them?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, did this man report to you from time to time?

A. He did.

Q. I believe the subpoenae called on you for the furnishing of such reports?

903 A. I do not have them.

Q. What became of those reports?

A. I read the reports, and destroyed them as read.

Q. As soon as you read those reports, you destroyed them?

A. That is right.

Q. They would not be in the possession of any other official of the company?

A. No, sir.

Q. How were those reports received, Mr. Aitchison?

A. They were mailed to me at my home.

Q. They were mailed to you at your home?

A. Yes.

Q. From whom did they come? From what source did they come?

A. I believe at the beginning, some of them were transmitted from the office of the National Metal Trades Association. Later on, they came to me direct.

Q. They came direct from Johnstone to you?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, in this class of things that Johnstone was to observe, namely, all other factors reflected in the prevailing rate of production, what type of activity was covered by that particular classification?

904 A. We knew there was some unrest in the plant. We had an unsatisfactory condition with reference to foremen and supervision.

There was a natural reluctance on the part of the workmen to talk about their foremen, and about conditions, which they felt might kick back on them. We had lost the services of our chief engineer, and a number of promotions had been

made, largely because we took the next man in line to fill the job, although he had no experience in that job.

I suspected that in numerous instances the general foreman supervision of production was not filled by a man who really was a man qualified for the job, but rather by a man who had been with us for a great many years.

Q. Now, was there—

A. Therefore, he was instructed when he came in, to withhold nothing in his reports, and no criticisms of anybody as the reports would come to me only.

Q. Now, would the fact that your men were organizing a union be one of the things he would report on?

A. He reported that union activities on the premises was one factor interfering with production.

Q. Did he also report he had become a member of the union himself?

A. I think he did.

905 Q. Did he report to you the names of other men that were members of the union?

A. No, sir.

Q. Did he report to you the names of the men active in the organization of this union?

A. He reported, as to the union, only the names of the officers, and the speakers that they had at such meetings as he attended.

Q. Every time he would attend a union meeting, would he report to you on it?

A. I think there were not over four reports that mentioned union meetings.

Q. Four of the reports that he filed did mention them, however, is that right?

A. He did not at any time report the number that was at the union meetings, nor give any statistics to that extent.

Q. Now, when you filed your application for membership in the National Metal Trades Association, did you know the objects and purposes of that organization?

A. Well, I knew that they ran a very comprehensive service in foreman training, apprenticeship, general information and statistics, and an employment service.

I knew that they stood very high in the estimation of other manufacturers.

Q. You also knew that it was one of their principles  
906 that they would operate their plants on the open shop plan, is that right?

Mr. Swiren: We object to that, if the Examiner please.

Mr. Walsh: I am inquiring of this witness as to what he knew at that time.

Mr. Swiren: I understand the question. I would like to be heard on it. I think it goes to a large line of testimony.

I do not think it makes a particle of difference whether this company belonged to any organizations or what the policies of those organizations may have been.

The only question is, what this company did. Unless they can show the company did something which they now complain of, or unless they can show that the association with which this company joined was engaged in certain activities on behalf of the company that they now complain of, I cannot see that there is any pertinency to it.

Trial Examiner Dudley: Objection overruled. The testimony may be admitted for such weight as it may have.

The Witness: Repeat the question, please.

Mr. Walsh: Read the question, please.

(The question was read.)

A. I knew that their idea about a closed shop and mine are exactly the same.

Q. (By Mr. Walsh) Your ideas about a closed shop have not changed since the time you joined that association, 907 have they?

A. No, sir.

Q. Are you familiar with—

A. Nor before.

Q. (Continuing) The declaration of principles of that organization, Mr. Aitchison?

A. I would not say I am familiar with it, no.

Q. If I should read to you—I will read the second declaration of principle of the National Metal Trades Association, entitled "Strikes and Lockouts":

"This association disapproves of strikes and lockouts in the settlement of labor disputes. This association will not countenance a lockout unless all reasonable means of adjustment have failed. Neither will the members of this association deal with striking employes as a body."

Does that pretty well express your views on that question?

Mr. Swiren: Just a minute.

The Witness: I did not know of that one.

Q. (By Mr. Walsh) Does that pretty well express your views on this question?

Mr. Swiren: That is objected to.



The Witness: No, it does not.

Mr. Swiren: I do not see that it makes any difference what views Mr. Aitchison entertains.

908 Trial Examiner Dudley: The witness already answered. The answer may stand.

Mr. Walsh: The answer was "No".

Mr. Swiren: Will the Examiner note an objection to the entire line of questioning with relation to the National Metal Trades Association, its policies, and its point of view with respect to labor difficulties?

Trial Examiner Dudley: The objection may be noted in the record.

Mr. Walsh: Is the objection overruled?

Trial Examiner Dudley: Yes; the objection is overruled.

Q. (By Mr. Walsh) Now, Mr. Aitchison, was it necessary for you to pay some compensation to the National Metal Trades Association for the use of Johnstone and his reporting service?

A. It was not, to the association; it was to Johnstone.

Q. Did you pay him anything over and above the normal weekly wage he received?

A. Yes.

Q. How much did you pay him?

A. I think it was an adjustment between whatever he earned in the plant and \$200 a month.

Q. Do you recall how much he earned at the plant?

A. I have the figures here, if that is of interest.

909 Q. You say you have those figures?

A. Yes.

Mr. Swiren: Just a moment.

Mr. Walsh announced yesterday the principle that instruments need not be produced except on subpoena, even if they were in the possession of the witness.

We will expect Mr. Walsh to adhere to that same principle for both sides. He does not have difficulty in getting subpoenas anyhow.

Mr. Walsh: Well, as a matter of fact, Mr. Swiren, I have called for that in the subpoena.

Mr. Swiren: Did you?

Mr. Walsh: Yes. Therefore, I am entitled to look.

Mr. Swiren: If you asked for it, you are permitted to have it.

Trial Examiner Dudley: Let us proceed, gentlemen.

Q. (By Mr. Walsh) Mr. Aitchison, will you refer to that

record and state just what payments were made to Johnstone over and above the amount he earned as his weekly wage during the period of time that he was employed by the Fansteel Metallurgical Corporation?

A. He was employed on the 18th of August, and discharged at noon on the 1st of December. During that entire period he was paid \$347.93, for his work in the shop.

Q. Yes.

910 A. The difference between that and \$200 a month was what was paid to him.

Q. What was that difference?

A. I do not know. I will have to figure it. It was about \$310; I cannot give you the exact figure. It is about that.

Q. So, during that period from the 17th day of August until the 1st of December he was paid about \$350, or \$360—I mean, \$650, is that right?

A. That is about right.

Q. \$650 or \$660.

A. Yes.

Q. Now, was there any reason why you should not have received these reports from Johnstone at the office in the regular course of company business?

A. Yes. He was serving me in a confidential capacity, and anything put through the regular office, somebody would know about.

Q. The reports were of such a nature that you felt they should not be part of the company records, is that right?

A. That is right.

Q. So you had them destroyed?

A. Criticisms of his own boss and others do not make very good additions to the regular file.

911 Q. Do you know at the time you joined the National Metal Trades Association that they furnished strike insurance of a kind, one kind or another?

Mr. Swiren: That is objected to.

Mr. Walsh: It is a question of whether he knows.

Mr. Swiren: What is the difference?

Trial Examiner Dudley: Objection overruled.

A. I did not know what they furnished.

Q. (By Mr. Walsh) Did you later—

Trial Examiner Dudley: What was the answer?

The Witness: I did not know what they furnished.

Q. (By Mr. Walsh) Did you later make any inquiry?

A. I was told when we went in, that we would not have

any of the service that they might render until we were elected a full-fledged member. I knew that in advance.

Q. So, what service they could render you, would not be available until you became a member, is that right?

A. That is right.

Q. Did you request any other service from them than the service of Johnstone between the first of August, or the middle of August last year, down to the present time?

A. None, except the opportunity to talk with their attorneys, and to talk with their administrative officers.

Q. You talked to them concerning your labor difficulty, I take it?

912 A. I talked to them and tried to get an expression as to what the sentiment was among the membership, and other business men, not only as to labor relations, but as to apprenticeship particularly.

Q. Now, at the time your plant was reopened, did you receive any employees that were sent to you by the Metal Trades Association, or did they send you any?

A. Well, at the time we reopened the plant, I think we sought employees from a number of employment agencies.

Q. You knew that the National Metal Trades Association ran an employment agency, did you not?

A. Yes, sir.

Q. Did you ask them to send you some employees?

A. Well, there are some crafts in which there are mighty few skilled men in Waukegan. I think we secured through their employment service two men.

Q. Two men?

A. Two men.

Q. What crafts were those men in?

A. Expert screw machine operators.

Q. Automatic screw machine operators?

A. Expert screw machine operators.

Mr. Swiren: I move to strike out the testimony with respect to the employment of these two men. I do not see that it has any pertinency to these issues.

913 Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh) Those men were placed in jobs that had been occupied by the men who had gone out on strike, and had engaged in the strike?

Mr. Swiren: I do not know that there has been any testimony about who went out on strike. The only testimony we have had has been as to the men seizing the plant. I object to the question.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: I think Mr. Aitchison understands what I mean.

The Witness: As we recruited a new force, we took back as many people as would come back and make application. There were, naturally, some vacancies.

Mr. Walsh: Yes.

The Witness: One of the vacancies was on the screw machine—or, two of the vacancies were on the screw machines, and that is where these men were put.

Q. (By Mr. Walsh) I do not suppose you could tell me offhand who had occupied those jobs before?

A. I think Ed Ruck was one. I do not know who the other fellow was.

Q. Did you receive any assistance from the National Metal Trades Association in the conduct of the strike—

A. No, sir.

914 Q. —that you had?

A. No, sir.

Q. Did you know at the time you joined that association that you could make no settlement with your striking workmen without the consent of the National Metal Trades Association in writing?

Mr. Swiren: That is objected to. The testimony shows the company did not become a member until April, which was long after the sit-down had ended, and the buildings were restored to the company, and production resumed.

The Witness: We never had any discussion of any kind—

Mr. Swiren: Just a moment. I ask for a ruling.

Trial Examiner Dudley: The testimony indicates that the application for membership was made some time previously. The objection is therefore overruled.

The Witness: What was the question?

Trial Examiner Dudley: Read the question.

(The question was read.)

Trial Examiner Dudley: What was the answer?

The Witness: No.

Mr. Swiren: What was the answer?

The Witness: The answer is "No". As a matter of fact,—

Mr. Walsh: Now, at the time—

Mr. Swiren: Just a moment. Let us hear the rest of the answer.

915 Mr. Walsh: Excuse me.

The Witness: I say, as a matter of fact, we could make any settlement we chose.

Q. (By Mr. Walsh) Did you know at the time you were elected to membership that you could make no settlement with your workmen without the consent of the National Metal Trades Association in writing?

Mr. Swiren: I object to the form of the question. I think he ought to ask him whether there was any such understanding or agreement before assuming that there is.

Trial Examiner Dudley: The question relates to his knowledge of the rules of the Association.

Mr. Swiren: Well, I do not question the rules, but there has to be a rule before there can be any knowledge of it.

Trial Examiner Dudley: What is the question?

(The question was read.)

Mr. Swiren: I think the rule ought to be bared, if there is a rule, and then you can proceed to the question of knowledge, instead of taking Mr. Walsh's interpretation of what might be a rule.

Trial Examiner Dudley: The witness may answer as to his knowledge of the existence or non-existence of any such rule.

The Witness: No.

Q. (By Mr. Walsh) Mr. Aitchison, you were familiar  
916 with the general purpose of this Association, which was,

I take it, to operate their various businesses on the open-shop plan?

You were familiar with that?

A. I know that principle agreed 100 per cent with my idea of it.

Q. All right. Now, I will read to you Article 13, Section 6, of the constitution of that body, as follows:

"No member shall adjust with its employees any strike or difficulty, the settlement of which involves a violation of this constitution or the principles of this association as set out in the declaration of principles. The questions arising as to the interpretation thereof shall be referred to the administrative council."

I will ask you whether or not you agree with that?

A. I have never read the constitution, or their declaration.

Q. Did you know that provision was in their constitution?

A. No, sir.

Q. Neither at the time you joined the association, nor at the time you applied for membership?

A. That is right.

Q. I will read Article 13, Section 7, and ask you if you knew this—

Mr. Swiren: Just a moment. We object to any further references to the constitution, in view of the testimony of 917 the witness that he has never read the constitution of the association.

Mr. Walsh: He may have heard about it.

Trial Examiner Dudley: The witness has testified he joined the association.

Mr. Swiren: That is right.

Mr. Walsh: It is his club.

Trial Examiner Dudley: The objection is therefore overruled.

Mr. Walsh: I will read Article 13, Section 7 of the constitution entitled "Penalty for settling without the approval of the administrative council."

"If, without the consent of the administrative council a member shall settle a difference or strike, the defense of which has been assumed by the association, such member shall repay to the association all of the moneys which the association may have expended on account of having assumed the defense of such difference or strike, and shall also be liable to suspension or expulsion."

Mr. Swiren: We object, in addition to the grounds already stated, on the further ground that there is no evidence as to what the constitution actually is, other than Mr. Walsh's statement.

Further, the rule referred to applies only to cases 918 where the defense has been assumed by the association.

The testimony shows there was no such assumption of any defense on behalf of this company by that association, so it could not be applicable.

Trial Examiner Dudley: Objection overruled.

The Witness: In the first place, I would say—

Mr. Keele: Just a moment, please, Mr. Aitchison.

The Witness: All right.

Mr. Keele: I would like to state a further ground of objection. I think we ought to have some proof as to what the rules are. For all we know, Mr. Adelman had this printed up in Wankegan. We have no way of knowing whether he is reading the constitution or not.

Unless he can justify the authenticity of it, I do not think he ought to be allowed to cross examine the witness on it. If he wants to take the stand, and testify those are the rules, or



that is the constitution, and be subjected to cross examination on it, all right.

We have no way of knowing whether that is the constitution or not. You are permitting him to cross examine the witness, and use a document, the authenticity of which has not been shown, as though it were a fact.

I do not think your Honor wants to go forward on that basis.

Mr. Walsh: I will state, if your Honor please, that I 919 am reading from the report of the hearings before a sub-committee of the Committee of Educational Labor of the United States Senate, pursuant to Senate Resolution No. 266, 74th Congress, part 3, Exhibit 389, being the National Metal Trade Association Constitution, By-Laws and Declaration of Principles.

The portion I have just read will be found on page 1007 of this document.

Mr. Keele: There is still nothing to guarantee that is a correct statement.

Mr. Walsh: All I know is that this is what the witnesses for the National Metal Trades Association filed in evidence in that hearing, as being their constitution and by-laws.

The publication is printed by the United States Government Printing Office in Washington.

Trial Examiner Dudley: Mr. Keele, the witness is testifying only to his knowledge or lack of knowledge of this constitutional provision and other provisions. He may certainly testify as to his knowledge, even though these provisions should be quoted inaccurately.

The Board will bear in your mind your objections in considering the questions, insofar as they might be relevant to any proof of the actual existence of such rules.

The testimony is merely Mr. Aitchison's knowledge of 920 such rules. If additional evidence is introduced as to the actual contents of the constitution or other rules of the association, the Board can consider this in the light of such evidence, or in the light of the lack of such evidence.

Mr. Keele: I think then he ought to be asked whether or not he knows whether such a rule exists, instead of having counsel state that such-and-such a rule, or such-and-such a provision was in the constitution, because counsel does not know.

He ought to ask him whether he knows if such and such a provision appears there.

**Trial Examiner Dudley:** The witness is merely replying as to his knowledge of whether or not there was such a provision.

**Mr. Keele:** I do not think the Board ought to be reading the testimony of its own employee, as though it were testimony, and that is exactly what is happening here.

**Mr. Walsh** is saying "Did you know that such-and-such a provision was in the constitution?"

In other words, he is making a statement each time that it does appear in the constitution.

**Trial Examiner Dudley:** That is a statement only of counsel, and not the witness.

**Mr. Keele:** Counsel is bound by the Board.

**Trial Examiner Dudley:** The Board will remember 921 that the statements of counsel are not the statements of the witness.

**Mr. Keele:** We hope it will.

**Mr. Walsh:** I might say, for your information, Mr. Keele, that the Board does not always agree with everything I say.

**Mr. Swiren:** Well, that is hopeful.

**Mr. Keele:** I assume my objection is overruled.

**Trial Examiner Dudley:** Yes, your objection is overruled.

**The Witness:** Read the question. Read the question without repeating what he read.

**Q. (By Mr. Walsh)** The question was, did you know such a provision existed at the time you joined?

**A.** I did not. I have no arrangement with the National Association to settle any troubles of ours. We will settle our own problems. If that means we are suspended by them, that is all right with me.

**Q.** You will just be tough?

**A.** We settle our own affairs at North Chicago. They are not settling them.

**Q.** After you were elected to membership in this association, did you enter into any contracts of any kind with the association?

**A.** Not other than the application.

**Q.** I believe I called for correspondence between the Fansteel Company and the association. Did you have any 922 correspondence with them?

**A.** Yes.

**Q.** Do you have it present?

**A.** Yes. I have these too, if you want them. (Handing documents to counsel.)

Q. These documents are services they issued from time to time?

A. That is right. There are mimeographed sheets, as well as printed sheets. Is this part of the correspondence too? (Handing documents to counsel.)

Mr. Walsh: Mr. Examiner, may I suggest an adjournment at this time? I would like to look these over, and see whether there is anything in here that I want to put in evidence. I will give them back to you after lunch. I do not think there is anything in here I want.

Trial Examiner Dudley: Is there any objection, Mr. Swiren, to an adjournment for lunch?

Mr. Swiren: No.

Trial Examiner Dudley: What time would you like to reconvene?

Mr. Walsh: Two o'clock is all right.

Trial Examiner Dudley: We will reconvene at 2 o'clock this afternoon, in this room.

(Whereupon, at 12:30 o'clock P. M. a recess was taken until 2:00 o'clock P. M.)

923

*After Recess.*

(The hearing was resumed at 2 o'clock P. M. pursuant to the taking of recess.)

**Appearances:**

As heretofore noted, and the following additional appearance:

Lester Collins, Waukegan, Illinois, appearing on behalf of Local 66, of the Amalgamated Association of Iron, Steel & Tin Workers of North America.

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Trial Examiner Dudley: The hearing will reconvene.

ROBERT J. AITCHISON, the witness on the stand at the time of taking of recess, resumed the stand and further testified as follows:

*Direct Examination (Continued).*

Q. (By Mr. Walsh) Mr. Aitchison, referring to your letter to the National Metal Trades Association, dated April 20th, 1937, I will read it as follows:

"National Metal Trades Association,  
"122 South Michigan Avenue,  
"Chicago, Illinois.

"Gentlemen:"

Mr. Swiren: Just a minute. Why do you not just offer the letter, so we can object to it, before you read it into the record?

Mr. Walsh: All right. Will you furnish a copy of this 924 letter?

Mr. Swiren: Certainly. We will furnish you with copies, if the Examiner decides to admit it in evidence.

Mr. Walsh: Will you mark this Board's Exhibit No. 21 for identification please, Mr. Reporter.

(The document referred to was marked "Board's Exhibit No. 21", for identification.)

Trial Examiner Dudley: What is the date of that letter?

Mr. Walsh: April 20th, 1937.

Mr. Swiren: Are you offering it?

Mr. Walsh: Yes. I offer it in evidence.

Mr. Swiren: We object on the ground it has no materiality to any of the issues here.

Mr. Walsh: Would the Examiner like to see it?

Trial Examiner Dudley: Yes.

Mr. Swiren: What Exhibit number is that, Mr. Walsh?

Mr. Walsh: That is Board's Exhibit 21.

The Witness: May I see it now?

Mr. Walsh: Yes. (Handing document to the witness.)

Trial Examiner Dudley: It may be admitted in evidence, for such testimony as it may give.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT 21", Witness Aitchison.)

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh) Referring to that letter, I notice 925 you instructed the association to discontinue the mailing of literature and other things that you would be receiving, to your home, and instructed them to mail them to the office, is that right?

A. That is right.

Q. You say in the letter: "I think that the occasion for addressing communications to me at my home"—giving the address—"has passed."

What occasion was it that caused you to have these things addressed to your home, rather than to your office?

A. Well, the original reports that came from Johnstone

were mailed to me at my home. Later on I received a lot of regular printed bulletins from the association, and I had to carry them from home to the plant, so I saw no reason for carrying that way.

Q. This of course was after the date Johnstone ceased to be employed, was it not?

A. It was a long time after the date he ceased to be employed.

Mr. Walsh: Mr. Swiren, will you furnish me with a copy of that please?

Mr. Swiren: Yes.

Mr. Walsh: Will you mark this Board's Exhibit No. 22 for identification, Mr. Reporter.

(The document referred to was marked "Board's Exhibit No. 22," for identification.)

Mr. Swiren: Do you want a copy of both of these?

Mr. Walsh: No. I just want a copy of that first one.

Mr. Swiren: Are you offering this one now?

Mr. Walsh: I will offer that in evidence, yes.

Mr. Swiren: What is the date of that?

Trial Examiner Dudley: April 22, 1937.

Mr. Walsh: If the Examiner please, I now offer this in evidence.

Mr. Swiren: We object, on the ground it has no materiality to any issue in this case.

Trial Examiner Dudley: Objection overruled. It may be received in evidence.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 22", Witness Aitchison.)

Q. (By Mr. Walsh) Referring to Board's Exhibit No. 22, Mr. Aitchison, I will read from the last paragraph of your letters, as follows:

"I want to take this opportunity of also expressing to you our sincere appreciation of the many helps and assistance accorded us through the executive office of your association, and through the head office of your Chicago branch."

What are those many helps that the association rendered to you, to which you have reference?

A. Well, I have explained before that we were short of experienced help, short of apprentice training methods and short of understanding and knowledge of what many other plants are doing to build up a good effective organization.

We were extended the privilege of permitting our superintendants or foremen to attend certain meetings in which they

discussed matters of training help, training foremen, and training apprentices.

We were afforded an opportunity of getting, through the National Metal Trades Association an expression of the feeling of its members as to whether or not they were favorable to granting vacations with pay to hourly employees, which has been quite a disputed subject.

They gave me an opportunity to talk to one of their attorneys as to their construction of certain features of industrial relations that were going on in different parts of the country. I had a rather free opportunity, should I choose to call on them, to obtain expressions of what other people in the country thought as to different problems.

I thought, in spite of the fact that we were a member paying dues, and contributing to the support of the organization, that was extending a very fine courtesy.

Mr. Walsh: Will you mark this Board's Exhibit No. 23 for identification, please, Mr. Reporter.

928 (The document referred to was marked "Board's Exhibit No. 23", for identification.)

Mr. Walsh: I would like to offer at this time in evidence the application for membership in the National Metal Trades Association of the Fansteel Metallurgical Corporation.

Mr. Swiren: That is objected to. It has no materiality to any of the issues in this case. The evidence further shows the application for membership was not accepted or acted upon until long after any of the dates listed in the complaint.

I do not see how membership in the association afterwards, or the application in advance can have any materiality or any bearing on the issues in this case.

Trial Examiner Dudley: Mr. Swiren, do you want to have the application verified? Is that the original that is being submitted?

Mr. Walsh: There are matters contained in this application concerning which I would like to question the witness.

Trial Examiner Dudley: You will have the witness testify that this is the application?

Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: You will have the witness testify that this is the application?

Mr. Walsh: Yes.

929 Trial Examiner Dudley: Objection overruled.

(The document referred to was received in evidence



and marked "BOARD'S EXHIBIT NO. 23", Witness Aitchison.)

Trial Examiner Dudley: You may proceed, Mr. Walsh.

Q. (By Mr. Walsh) I hand you what has been marked Board's Exhibit No. 23, which is a document you furnished me, purporting to be your application for membership in the National Metal Trades Association.

Are you informed as to whether that is a correct copy of your application?

A. That is the file copy. I imagine it is correct.

Q. You assume it is correct?

A. Yes.

Q. Would you refer to the back page of that application, and read the note there for the record please.

Mr. Swiren: Just a moment please. You have offered the application. I do not see any purpose in asking any questions about the note. Whatever is on there is there.

Mr. Walsh: All right.

Trial Examiner Dudley: Is the question withdrawn?

Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: Is the question withdrawn?

Mr. Walsh: The question will be withdrawr. I will read the note. Referring to the back page of the application you will find a note as follows:

930 "In filling out this application, it should be remembered that foundry employees, truck drivers, yard men, engineers, firemen, watchmen, crane men, elevator operators, stock keepers, packing room employees, janitors, clerks, draftsmen, superintendents, general foremen, foremen, and all non-productive labor should not be included; neither should operatives employed outside of the premises of the plant be included in this report."

Now, in accordance with that instruction, you reported to the association that you had: "All-around machinists, 9. Lathe hands, 1. Shaper hands, 1. Drill press hands, 1. Screw machine hands, 2. Die makers, 1. Apprentices, 4. Heading machine operators, 2. Hardeners and annealers, 13. Electric furnace chemical process, 6",—making a total of 44.

Q. (By Mr. Walsh) That is what you reported, did you not?

A. There are some more.

A. Well, for this particular column, there are 44, are there not?

A. I did not make out the figures.

Q. I see.

A. Apparently that was what was reported. I assume that is right.

Q. Now, under the heading of "General Manufacturing", you show: "Power press hands, 2; miscellaneous machine 931 operators, 17; metal parts assemblers, 2 men and 11 women; braziers, 2; polishers, diamond dyes, 2 men and 1 woman; platers, 2; inspectors, 1 man and 18 women; miscellaneous production labor, 1; miscellaneous production chemical process, 7".

Then in the rolling and wire mill department, you show: "Metal rollers, 4; bull block men, 3; wire drawers, 4 men and 1 woman; swedgers, 6; annealers, 4."

In the maintenance department you show: "Carpenters, 3; millwrights, 2; pipe fitters, 2; electrical workers, 1; electric furnace repairers, 2, and helper 1."

That makes a total of 68 men and 31 women in those classifications. That was as of August 17, 1936.

Now, does that reflect the number of production workers that you had at that time?

A. Well, the way this organization assessed its dues is this: It is based on certain classifications of work in the plant, and that is our interpretation of the classifications of work on which the payment of dues would be based, if, as and when we were admitted as members.

Q. I see.

A. It does not include the people in the plant that are really engaged in productive work, but who do not come under these classifications.

Q. I believe those figures total 143. Have you checked that?

932 A. No.

Mr. Walsh: I would like to offer a copy of this in lieu of this document. This will be withdrawn and a copy substituted, so they may have it for their records.

Mr. Swiren: It was offered, as I understood it.

Trial Examiner Dudley: It was offered in evidence, and admitted, yes.

Mr. Walsh: Yes.

Trial Examiner Dudley: Permission is granted to withdraw it and substitute a copy.

Mr. Walsh: I am going to offer this in evidence. (Handing document to Mr. Swiren.)

Mr. Swiren: You had better have it identified.

Mr. Walsh: Will you mark this Board's Exhibit 24 for identification, please, Mr. Reporter.

(The document referred to was marked "Board's Exhibit No. 24", for identification.)

Q. (By Mr. Walsh) I hand you a paper which has been marked Board's Exhibit No. 24. I will ask you if that is the letter you received from the National Metal Trades Association?

A. This is the letter I received advising that we had been elected to membership.

Q. I see. The attached excerpts from the constitution and by-laws was on that letter, was it not?

A. Yes. This was attached when it came.

933 Q. It was.

A. Yes.

Mr. Walsh: I would like to offer this in evidence, if the Examiner please.

Mr. Swiren: I would like to ask one question with reference to this.

Q. (By Mr. Swiren) When was that received, Mr. Aitchison?

A. It was received the same day I wrote the letter to Mr. Strawbridge. I think it is April 14th.

Mr. Swiren: We object. It is not any materiality. In addition, it was received long after any of the dates specified in the complaint, of the matters therein referred to.

The Witness: He offered one letter in evidence, the one in which we acknowledged the receipt of this, the yellow carbon.

Mr. Walsh: That was April 20th.

The Witness: That is right, then. At least, that is when I wrote it—or rather, that is when I got it.

Q. (By Mr. Walsh) That is your best recollection of when you received it, is that right?

A. It says there that I was out of the city, does it not?

Mr. Walsh: That must have been April 22nd.

Trial Examiner Dudley: You wrote them a letter on the 22nd?

934 The Witness: That is when I got this. I had been away for about ten days and when I came back there was an accumulation on the desk.

Trial Examiner Dudley: Do you still maintain your objection, Mr. Swiren?

Mr. Swiren: Yes.

Trial Examiner Dudley: The objection is overruled.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 24", Witness Atchison.)

Mr. Walsh: I do not care to ask any questions about this. Do you want to submit a copy?

Mr. Swiren: Yes.

Mr. Walsh: I will ask leave to withdraw it, and furnish a copy of the letter.

Trial Examiner Dudley: Leave is granted.

Q. (By Mr. Walsh) Mr. Atchison, how long has the plant of the Fansteel Company been standing out there—withdraw that.

How old are the buildings of the Fansteel plant? I suppose they vary in age, do they not?

A. Do you care if I look at something here?

Q. No. Go ahead.

A. I cannot testify exactly how old they are.

Q. The plant has been there about 20 years, has it not, roughly?

935 A. What we classify as Building 5, the building itself is some 60 years old.

Q. I see.

A. It was taken by the Fansteel Electrical Laboratory in 1908. Business was started in 1907. They rented the place in 1908. They occupied another building in 1907.

Q. Since 1907 you have been in that same general location or the same location?

A. In 1907 they were just south of the power plant, which is two blocks north of the present plant. In 1908 they moved down to Building 5, and other buildings since then have been added on from time to time.

Q. So you have a total now of 15 buildings, 14 or 15 buildings?

A. 15 buildings.

Q. 15 buildings.

A. Yes, as we classify them.

Q. Are those 15 separate structures?

A. Yes, except building 6, which is a lean-to on building 5. It is a separate building, though, I assume.

Q. When did you build the fence around the property?

Mr. Swiren: That is objected to. It does not make any difference when we built our buildings or fences. I do not know

of anything in the Wagner Act that prohibits the building of a fence.

936 Trial Examiner Dudley: Objection overruled. I will admit the testimony subject to the introduction of testimony later to connect it up, in some way.

Mr. Swiren: The proper procedure would be to connect it up first.

The Witness: Well, the first discussion about the fence commenced in 1925, but the fence was actually constructed in early September, I think, 1936.

Q. (By Mr. Walsh) Then from 1925 until 1936 there was no occasion to have a fence, was there?

Mr. Swiren: That is objected to.

The Witness: My dear fellow, we had no money.

Mr. Swiren: Just a moment. I object to the question, and ask that the answer go out.

Trial Examiner Dudley: Objection overruled. The answer may stand.

The Witness: I went to the company in 1932, to see whether to wash them up in bankruptcy, or keep them afloat.

Q. (By Mr. Walsh) Did the reports Johnstone was making to you concerning the union activities going on in your plant have anything to do with the building of the fence?

A. Well, he said at one time that there were union organizers on the property practically every minute of the business day, and other people interfering with our operations. We have 15 buildings, and men have to go from building 937 to building in connection with their work. He said there were other trespassers and outsiders around the buildings practically all day, button-holing people in the yard.

That had something to do with our decision to keep people out that did not belong in there.

Mr. Walsh: That will be all.

Mr. Swiren: We object to all the testimony with respect to the fence, and ask that it be stricken.

Trial Examiner Dudley: The motion is denied.

Mr. Swiren: May I ask where the connection has been made?

Trial Examiner Dudley: There is a connection in time between the building of the fence and the commencement of the labor controversy. There is also a connection with the reports of Mr. Johnstone who at least submitted four reports as to labor union meetings according to the testimony of the witness this morning.

Proceed.

*Cross-Examination.*

Q. (By Mr. Swiren) Mr. Atchison, will you refer to Board's Exhibit 22, and tell us whether the excellent principle you referred to is mentioned in your letter, or the letter to which it is a reply?

A. Well, I think one of the principles I had in mind when I wrote the letter was that we have had no labor troubles 938 or difficulties with anybody since 1907. We have never interfered or attempted to influence our people in any way.

I think that it is a good American principle to let the workmen do as they please, and not be influenced one way or the other. We stand on that principle. We stood on it then and we stand on it now.

Q. Referring to the letter from Mr. Strawbridge, president of the association, to you on April 7, 1937, I will ask you whether there was anything in that letter to which your letter of April 22nd, Board's Exhibit No. 22, was a reply, so far as the association's principles were concerned?

A. Well, that letter states that the cardinal principle is to secure and preserve equitable conditions in the workshop of our members, for the protection for both the employer and the employee.

I think that means a square deal for everybody. We stand on that. We have always followed it. We still stand on it.

Q. You heard the testimony about a committee of the union that called on the management in July 1936?

A. Yes.

Q. At that time did you learn who the officers of Lodge 66 were?

A. Yes. They came in and told us.

Q. In addition to the information as to the officers, 939 did you learn anything—strike that out.

In addition to that information that the men gave you themselves, did you get any information respecting Lodge 66 leadership in the three or four reports you mentioned of Mr. Johnstone?

A. Well, at that time the men told us who were the leaders in the lodge movement. Subsequent reports of Johnstone merely mentioned the same names. There was no change to my understanding.

Q. Were any of the men you knew to be leaders or officers of Lodge 66 either by their own statements alone, or by their



own statements and the corroboration of Johnstone, discharged at any time prior to the evening of February 17, 1937?

A. No, sir.

Q. Were any of those men prior to that time threatened with discharge for being members of Lodge 66 or engaging in any union activities, or undertaking or purporting to undertake mutual aid and collective bargaining?

A. No, sir.

Q. Were they disciplined by reason of that in any respect or to any extent?

A. They were not.

Mr. Walsh: I object, if the Examiner please, unless counsel clarifies the word "discipline"; let him tell what was done.

940 Mr. Swiren: We understand the word. We can go further if Mr. Walsh prefers.

Trial Examiner Dudley: You may ask the witness what he means by "discipline", so there will not be any misunderstanding about the word.

Q. (By Mr. Swiren) Was any action taken with respect to these men by the company predicated upon their union membership, union activity, or collective bargaining activity prior to the evening of February 17, 1937?

A. There was not. They were not interfered with in any way whatsoever.

Q. Was there any action taken with respect to them on the evening of February 17, 1937 by reason of their union activity or union membership, or participation in collective bargaining?

A. No, sir.

Q. Or at any time after that?

A. No, sir.

Q. Was there any change in your volume of production in the spring and summer of 1936?

A. There was a very substantial increase, beginning in the spring of 1936.

Q. An increase in what?

A. In volume of orders and quantity of products to be turned out.

941 Q. How was the production rate? Was that keeping pace with your increase in sales volume?

A. It did not.

Q. Was there any change in your plant supervision at or about that period?

A. There was a change in February, 1936, following the loss of our chief engineer, who had acted before that partly as an assistant to me.

I had to make some promotions, to get the assistance I required.

Q. Was production proceeding smoothly and efficiently during the spring and summer of 1936?

A. It did not. They had a number of things to turn out that they just did not get out at the times they should.

Q. Did those factors influence you in seeking the employment of Alfred Johnstone?

942 A. Those factors plus the cost at which the additional items were being produced influenced us.

Q. What do you mean by that?

A. I mean that either the workmen were not producing as they should, or the change in supervision that I made was not working out as I hoped it would.

Mr. Walsh: I object, unless he tells in what manner the workmen were not producing as they should.

Mr. Swiren: We will be very glad to amplify it for you, Mr. Walsh, so you will have all the facts.

Q. (By Mr. Swiren) Will you amplify that for Mr. Walsh, so he can understand it?

A. Well, we had been running short time during part of 1935, and we went into full time early in 1936. We know what the capacities of the machines are, and what they should turn out. They have turned it out before when we had a pressure of business.

We ran many hours more of overtime than we had run before. If we had so many thousand meters of wire to get out in a certain department in a given period of time, we did not get it. Sometimes it did not come off the machines. Sometimes the metal was blamed as being somewhat defective, and that was given as a reason for not accomplishing the result.

There was always a dozen alibis as to why the product did not come out as it should.

943 Q. Now, with respect to the matter of personal supervision, did you get any recommendations from Mr. Johnstone that you acted upon?

Mr. Walsh: I object, unless the reports are before the Board.

Trial Examiner Dudley: Objection overruled.

A. Yes. I did act on some recommendations.

Q. (By Mr. Swiren) Tell us the recommendations that

you got, that you acted upon, to the extent you remember them?

A. We had on the second floor of building 3, three departments. One was called the tool room; one was called the machine shop and heading department, and one was called the tantalum fabrication department.

The department of tantalum fabrication is a very technical one, and requires a close and intimate knowledge of the characteristics of the metal, in order to fabricate it.

The screw machine department was a department of automatic machines with expert operators. As to the heading machines of which they had six, personally, I never saw more than four running, and most of the time three were running, at one time.

Additional production equipment and repairs which were supposed to be handled through the tool department, just took so long to produce, that I found that we could have them done in much less time if we contracted for them on the outside.

944 Q. Now, what—

A. One of the suggestions Johnstone made was that Mr. Welch, who had been in charge of the machine shop, headers, and tool room, an old employee of 18 or 20 years, fully conversant with the characteristics of tantalum, might well be transferred, so as to be able to devote 100 per cent of his time to the supervision of that department.

I made that change, and hired a new foreman to take over the tool room. The man who had been an understudy to Welch, who had tried to watch tantalum fabrication, was needed as a master mechanic, in the mechanical department. He was moved, so he could carry on the new work, and we could keep up production.

Q. When were these changes made?

A. We started to build facilities for the master mechanic at the end of October.

Q. 1936?

A. 1936.

Q. Yes.

A. He was actually transferred over into his new quarters about the 1st of November. As to the new foreman of the tool room, we sought for a month to find a man to take the job, and finally secured one. I think he commenced his employment on the 15th of November.

Q. Did Johnstone recommend any changes or improvements in working conditions?

A. He suggested a number of conveniences and improvements that would make our plant measure up with more modern plants, in our 15 buildings, and we installed them.

Q. You did install them?

A. Yes.

Q. Tell us the improvements recommended by Johnstone that you acted upon and installed?

A. Late in August, shortly after he started his work, he recommended that most modern plants had both hot and cold water in the washrooms. He found that we had only cold water, and he suggested that hot water be installed.

Our engineers surveyed the job of putting in hot water, drew their recommendations, and I signed the authorization for the expenditure on the 3rd of September.

Another thing he recommended was that the ventilating capacity at the top of building 3 be increased, to clear the dust more quickly. That was recommended early in September, and I actually signed the authorization for the expenditure on the 28th of September.

Q. Was there anything else?

A. He suggested that the toilets in building 3 and building 5 were old, and had been there for many years, and that they were not what they ought to be.

We tore out the old toilets, and installed new and modern plumbing, in October.

Q. Were there any other changes made?

A. He suggested that the drinking water that was regularly supplied all over the plant through the bubbling fountain method was usually warm, and not cold. He recommended the installation of water coolers.

We worked out several alternate schemes, and finally put them in in October.

He also said the men in the tool room were standing around oftentimes behind the milling machine waiting to get at it. Further, he noted that it was too large a machine for a number of jobs. He suggested that could be handled with a different type of milling machine.

Q. You did purchase a new milling machine?

A. Yes. At the same time, he said the lathe they were using in the tool room might well be supplemented by a light lathe, a smaller one, for smaller work. We bought that.

Q. Were there any other mechanical or machinery changes he recommended that you acted upon?

A. Well, we had a job over there that is a difficult one in the sense that we use large carbon anodes and boxes. We usually buy that type of material in large pieces and machine out the forms that we need.

It is a dirty job, and a dusty job. He recommended the installation of improved dust extraction schemes, and he 947 also recommended the isolation of that job from the regular machine shop. We acted on that.

Another thing he suggested was that the tantalum welding department, where we had a certain amount of welding done—that the glare of the torches as applied sometimes reflects pretty severely in the eyes of the men working in what is known as the tool room division.

He suggested that it either be isolated, or be screened, so as not to permit the glare of the torches to reflect in the eyes of the men.

Q. By the way, after Johnstone came to the employee of the company, were there any individual raises given employees?

A. Yes, sir.

Q. Who approved those raises?

A. I did.

Q. You are familiar with the methods employed in granting those raises, is that right?

A. They all come to me on a card, the recommendations. They come to me for last approval.

Q. Were any of the officers or leaders, who made themselves known as officers or leaders of lodge 66 discriminated against—

A. No, sir.

Q. —in the granting of individual raises?

A. They were granted the same raises as they were justified.

Q. By the way, all of these changes you mentioned as 948 a result of Johnstone's reports were made about the dates you mentioned, or where you did not mention the dates, during the early fall of 1936, is that right?

A. The dates I mentioned are the dates I signed the authorizations for expenditure.

Q. When you did not mention dates—

A. Those expenditures are signed—or rather, those authorizations for expenditures are signed only after the job is engineered, and the bids for equipment to be installed have been received, and it has been approved.

Q. As to some of this equipment, you did not mention the dates. Could you give us a general idea, as near as you can?

A. It all happened on or before October 20th, 1936.

Q. After Johnstone had come to work for the company?

A. Yes.

Q. Did you talk to Johnstone before he came to work in the plant?

A. For a few minutes, yes.

Q. Did you give him instructions as to what he was to do?

A. I did.

Q. What instructions did you give him?

A. I told him he was in there to report to me every situation that came to his attention, that ordinarily should be recorded for correction, and not to withhold his punches.

He was to report on his own boss, the foremen of other 949 departments, working conditions, equipment, and anything of interest that would let us understand what we could do to increase production in the institution.

Incidentally, he made one criticism of me in his report.

Q. Did the company at the time of its application for membership in the National Metal Trades Association have other production and maintenance employees not listed in its application marked Board's Exhibit No. 23?

A. I think we did. These are only those that fitted our interpretation of those instructions.

Q. Instructions were for the purpose of determining the assessment to be paid?

A. That is right.

Q. That was not intended then to be a comprehensive list of all production employees, was it?

A. No. It is the basis on which they were to assess dues if, as and when we must be elected as a member.

Q. Was there any material change in respect to the company's cash working capital during the year 1936?

A. There was.

Q. When did it occur?

A. We entered into a contract in November 1935 for the sale of 20,000 shares of stock at \$10 cash, and one of the provisions of that refinancing—

Q. Never mind that.

950 A. All right.

Q. Let us get down to the cash.

A. All right.

Q. Did you get \$200,000 in cash?



A. We got it at the end of February 1936.

Q. Was any material portion of that devoted to plant improvements and building improvements?

A. We devoted more than 60 per cent of it to building and plant improvements.

Q. Principally during the year 1936?

A. Yes, sir, and the spring of 1937.

Mr. Swiren: That is all.

*Redirect Examination.*

Q. (By Mr. Walsh.) Mr. Aitchison, there was nothing in these reports of Johnstone's concerning the hot and cold water, the washrooms, the ventilation, or ventilating capacity of the plant, the drinking water situation, the purchase of a new milling machine, or the isolation of the welding that would require his reports to be destroyed, would there?

A. No, sir.

Q. These are changes, ordinary things that might have been noticed around the plant by you, if you were through the plant frequently, are they not?

A. They were recommendations that would not come to me through the foreman or others, that a stranger that 951 had just entered the employ of the plant, and who had worked in other plants, would naturally see, as he noticed their absence.

Q. Had Mr. Johnstone, to your knowledge, ever worked in a plant at which tantalum was fabricated?

A. Not to my knowledge.

Q. I believe you stated he recommended the full time employment of Mr. Welch in the tantalum fabrication department.

A. That is right.

Q. You have known Mr. Welch for 15 years, I suppose, have you not?

A. Directly and indirectly, yes.

Q. You are probably much more familiar with his work than a stranger coming into the plant, are you not?

A. Not directly.

Q. Your superintendent Mr. Henry had been with you a long time, had he not?

A. Yes.

Q. I presume Mr. Henry would probably know more about that than a stranger, would he not?

A. That was not the problem. When a man has been with you for 18 or 20 years, he builds a certain standing among the men, and he is very much against being pushed from one job to another, or transferred from one department to another, as he thinks it interferes with his standing.

As a matter of fact, when we made the change, Welch, 952 incidentally had been under discussion by Mr. Henry and our other people several times, for about three years before I moved him.

On one occasion I gave permission to discharge him, even though he had been with us for 18 or 20 years, unless he would get in harmony, and work cooperatively the way the superintendent told him to.

He is just one of those old-timers that do not line up as fast as new people do.

Q. Well, upon Mr. Johnstone's recommendation, you finally made him foreman of the tantalum fabrication department?

A. That was used as the basis for changing him from the tool room.

Mr. Walsh: I think that is all.

*Recross Examination.*

Q. (By Mr. Swiren.) Mr. Welch had had charge of the tantalum fabrication and tool room prior to that time, had he not?

A. Well, the tantalum fabrication has been a growth. It started in the back of the laboratory. Then it drifted into the tool room. In the tool room, part of it was handled by Welch, and part of it was handled by Howard Phillips.

There was a conflict between the two men, and it came to a place where somebody had to separate somebody from what he had been doing, in order to get results.

The result was that we decided to separate Welch from 953 his tool room, and let him go back to the painstaking work of tantalum fabrication.

Q. As I understand it then, you divided that one department into two departments, and Welch took charge of one of the two divisions of his old single department?

A. We divided it into three departments.

Q. I see. He took charge of one of those divisions?

A. He took charge of one of the three.

Mr. Swiren: That is all—no. Just a moment.

Q. (By Mr. Swiren.) Was the identity of Johnstone known through the plant?

A. No, sir.

Q. Did that secrecy have anything to do with the destruction of your reports?

A. Well, if he had been known to everybody, how could he serve me in the capacity I asked him to serve me in?

Q. Did the maintenance of that secrecy have any connection—

A. If everybody had known I had him in there, it would have destroyed his usefulness to me.

Q. Did that fact have any relation to your action in destroying his reports as they were received?

A. It did.

Q. Were individual reports limited to one item at a time?

A. No.

Q. Or were they general discussions?

954 A. They usually covered several things.

Q. So you did not have a single report suggesting the addition of a new small lathe?

A. No. That would be incorporated in his report.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: I have a few questions.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) Mr. Aitchison, was Mr. Johnstone hired as a machine operator as far as the plant was concerned?

A. Yes. He was hired as a man in the tool room, at a time when the superintendent was away on his vacation.

Q. As far as the plant was concerned, they considered him as a regular tool machine operator?

A. That is right.

Q. Did he make any other recommendations for changes in personnel besides that of Mr. Welch—is Welch the name?

A. Yes.

Q. Did he make any other recommendations?

A. He made a number of recommendations which we did not carry out.

Q. As to personnel?

A. As to personnel, and as to favoritism of the foremen

in assigning what they call the good jobs, the clean jobs, 955 to certain pets, and assigning the dirty jobs to the rest of them.

He made a number of recommendations with reference to that, some of which we could not act upon without showing our hand to the foreman, that we knew he was assigning good work to a few people as contrasted with the rest of them.

Everyone of those foremen were called in and talked to about the advisability of spreading the work around, and making a general distribution, instead of just assigning the better jobs to a few people who were reported to be pets of the foremen.

Q. Did you act on any other recommendations concerning personnel besides the recommendations concerning Mr. Welch?

A. Yes.

Q. What were the others?

A. As I said, in the heading machine department, I never saw more than four or six machines running at one time.

Mr. Chiswell whom I had planned would be assistant to the foreman of the contact division was changed from that, and given charge of the heading machines alone, because he just did not function as he should with the whole contact department.

Q. Were there other changes of personnel?

A. Well, we have in our laboratory an expert on contacts, who uses principally one assistant named Dickinson.

My attention was called to the fact that Dickinson would 956 come out of the laboratory into the contact department, or into the machine department and demand so many samples of this contact, or so many samples of this screw, for laboratory purposes, which interfered with ordinary routine production.

It just is not economical to shut down a run of 50,000 of a certain article, to get out 100 of something, even for laboratory purposes.

Mr. Dickinson was forbidden to go into the shop, except upon getting an order from the superintendent's office.

Q. Were there any others that you remember?

A. You mean, changes in personnel?

Q. Yes.

A. I am sure there were some others. However, they do not jump into my mind at the moment.

Q. That is all you can think of at the moment?

A. Yes.

Q. In telling these men of the changes in their status at the plant, did you ever tell them it was because of reports given to you by Johnstone?

A. No. After I got the reports I made it a practice to go out to the plant where I knew the trouble spot was, look around a little bit, and then get them together and hand it to them as though I had noticed it myself.

Q. So they thought it was your doing—

A. That is right.

957 Q. —rather than Johnstone's?

A. Yes.

Q. Had you had reports coming in to you during the previous months, say for six months, or perhaps a year, about these various men whose positions you changed?

That is, had you had complaints by workmen, foremen, or superintendents given to you, or suggestions that there ought to be changes made there?

A. I had no recommendations or complaints by the men who are reluctant to criticize those who are bossing them. However, Luther Henry, who was, you might say, perhaps the most important foreman we had recommended, and his predecessor, Mr. Dow, had come in several times when he almost demanded that I authorize him to discharge men who had been there for many years.

In those cases I tried to discuss it and see if there was not some basis for keeping the men and covering up the trouble, and getting away from it.

On two occasions I told him, "If you cannot get together, we will have to let them go."

Q. Did you ever, on those occasions, make an investigation of the situation personally, yourself?

A. Yes.

Q. By going in and watching, or talking to people?

A. Yes.

958 Q. Had you found such investigation to be insufficient?

A. Well, I found that the trouble was not so much with the active things, but it was a sort of a passive resistance, in which they say they will do this, or do that, but it just is never done.

Q. That was a passive resistance to your suggestions at the time?

A. That is right.

Q. Did you ever, as a result of your own personal investigations make definite changes in the status of personnel?

A. Yes.

Q. That was done, I suppose, on your own orders?

A. Yes. As a matter of fact, I went out in 1932 to see whether we would wash the company up in bankruptcy, or try to keep it afloat. I started immediately to make changes high in the institution, because obviously when you dispense with the president of the company, you save a lot more money than if you fire a basketful of workmen.

So, it took a little while to get down lower in the ranks to see where we could better the institution.

Q. Have you found that the changes made as a result of your own personal investigation, had a good effect?

A. I think they did.

Q. When did you destroy the reports submitted by Johnstone?

A. As fast as I read them. I read them at home, 959 and destroyed them.

Q. Did you ever take them to the factory?

A. No, sir.

Q. Do you have anything in your company files that would indicate the basis for changing the position of Mr. Welch, or changing the work of Mr. Chiswell, or Mr. Dickinson?

A. We just got them in the office, and talked to them. When we got through convincing them that it would be advantageous to the company, and to everybody's benefit, we would say "That is what we are going to do starting Monday."

Q. You have no files which would indicate that because of certain factors, or because of certain investigations you were changing these various men in their duties?

A. In dealing with the men, we very seldom use written orders stating why we do this, that, or the other thing.

Q. Do you have any reports in the files concerning the changes which you made as a result of your own personal investigations, which you mentioned?

A. The reports I wrote up, you mean, or somebody wrote up?

Q. Yes. I understood you to say that you had made some personal investigations, as a result of which you had made some changes.



A. That is right.

Q. That is, changes with reference to the status of these employees.

960 A. Yes.

Q. On these occasions did you put in the files of the company the reasons for such changes?

A. Whenever there were changes that had to be made, I went out and made them.

Q. Without making any record of the reasons for them?

A. Yes.

Trial Examiner Dudley: That is all.

The Witness: It is a small company after all. You do not have to handle it like you do a steel company. The boss is pretty close to the people.

Trial Examiner Dudley: That is all I have.

Mr. Walsh: That is all.

Mr. Swiren: I have nothing further.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: You may call your next witness, Mr. Walsh.

Mr. Walsh: Mr. Abbott.

O. R. ABBOTT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh) Will you state your full name, please?

A. O. R. Abbott.

Q. Where do you live, Mr. Abbott?

961 A. 6949 Merrill Avenue, Chicago.

Q. What is your business or occupation?

A. Office manager for the National Metal Trades Association.

Q. Your address is 122 Michigan Avenue?

A. That is correct.

Q. Chicago, Illinois.

A. Yes, sir.

Q. In response to a subpoena from the National Labor Relations Board, you produced certain records, I believe, did you not?

A. Yes.

Q. Will you refer to the minutes of the executive committee of the National Metal Trades Association for March the 24th, 1937?

A. Yes.

Q. Do you find in those minutes a reference to the Fansteel Metallurgical Corporation?

A. I do.

Q. What is that reference?

A. "Applications accepted. It was moved and seconded that the following applications be accepted:", and Fansteel is mentioned among several others there.

Mr. Walsh: Will you read that answer, please, Mr. Reporter; I did not hear the first part of it.

(The answer was read.)

962 Q. (By Mr. Walsh) Did you have some contact with the Fansteel Metallurgical Corporation prior to their admission as a member of your organization?

A. Yes, sir.

Q. What was the first date that you had any contact with anybody from that company?

A. On or about the 15th of August 1936 Mr. Aitchison came into our office in Chicago.

Q. Did you talk with Mr. Aitchison at that time?

A. I talked with him part of the time, and he held a conference with our secretary, Mr. Flynn.

Q. Mr. Flynn, you say?

A. Mr. Flynn.

Q. As a result of the conference did the Association render some service to the company?

A. It did.

Q. What was that service?

A. Two days later Mr. Flett, our membership man came up here and secured a membership application from the company, and at about the same time a confidential operative was assigned to the shop.

Q. What was the name of that operative?

A. Alfred Johnstone.

Q. What trade does he follow?

A. He is a machinist, too! and diemaker.

963 Q. Is he an expert on the efficiency of plant supervision?

A. He is an old time machinist, and quite an elderly man. Almost anybody who has worked around shops all of his life, can go into one shop and suggest improvements, where people

who are ordinarily there would not discover the need for them.

Q. He was not a plant engineer, was he?

A. He was not, no, sir.

Q. I will ask you whether or not he was an expert in the efficiency of tool machine equipment?

A. I consider that he was. He was a tool and diemaker.

Q. He was a tool and diemaker?

A. Yes.

Q. He was not a mechanical engineer, was he?

A. He was not.

Trial Examiner Dudley: What was the answer, Mr. Reporter?

(The answer was read.)

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh): Would you say he was an expert on the morale of employees?

A. I would consider him such, yes, sir.

Q. What would lead you to believe he would be an expert in that field, Mr. Abbott?

A. He worked in shops all of his life, probably 30 964 years anyway.

Q. How old a man is he?

A. Anywhere from 50 to 55.

Q. I believe in your testimony before the Senate Committee, Senator LeFollette asked you whether you knew that in 1919 this man had been indicted for inciting strikes and riots. Is that correct?

A. He did not ask me that. He asked me if Sherman Service had been indicted for inciting strikes and riots.

Mr. Swiren: Give us the page reference of the testimony you are referring to, Mr. Walsh.

Mr. Walsh: It is page 872, I believe, of part 3.

Mr. Swiren: All right.

Mr. Walsh: Pardon me. That is correct. The Sherman Service was indicted.

Q. (By Mr. Walsh): Did you furnish any other operatives or guards, or workers—

A. We did not.

Q. —to Fansteel?

A. We did not.

Q. At the conclusion of their present difficulties, did you send them any employees?

A. We did not.

Q. The National Metal Trades Association is an old organization, I believe, formed in 1899, is that right?

965 A. Yes.

Q. Since that time it has been the policy of the members of the Association to conduct their business on the open shop plan, is that right?

Mr. Swiren: That is objected to, as not being material to the issues here. The only question here is the conduct of this respondent, the Fansteel Metallurgical Corporation.

Trial Examiner Dudley: I will overrule the objection. He may answer.

A. The plants have been operated on an open shop basis, yes.

Q. (By Mr. Walsh) It is also one of the principles of that organization that the members of the organization will not deal with their striking workmen as a body, is that right?

Mr. Swiren: That is objected to. It has no application to this case. It is not tied up with the Fansteel Metallurgical Corporation in any way.

The testimony is that the president of the Fansteel Metallurgical Corporation did not know anything about that kind of a principle. He said on the stand that they were handling their own affairs.

Further, there is no evidence of a so-called strike. The evidence is here that some men went out and seized the plant. We do not know whether that is counsel's definition of a strike or not.

966 Trial Examiner Dudley: The evidence shows that the company is a member of the Association.

Mr. Swiren: The evidence also shows that the company became a member long after any of the acts complained of in the complaint were alleged to have occurred, and had no knowledge of any of the matters concerning which counsel is now examining this witness.

Trial Examiner Dudley: The evidence will show that they became a member in the latter part of March, 1937.

Mr. Swiren: No. They became a member in April, 1937.

Trial Examiner Dudley: All right, in April, 1937.

Mr. Walsh: It was March 24th, to be exact.

Mr. Swiren: No. To be exact, the company became a member when they paid their first installment of dues, which was in April, 1937.

The Witness: That is correct.

Mr. Swiren: Is that not right, Mr. Abbott?

The Witness: Yes.

Trial Examiner Dudley: The application was accepted on March 24th.

The Witness: It does not take effect until the initial assessment has been paid.

Trial Examiner Dudley: I see. The Fansteel Metallurgical Corporation is now a member of the Association, is it not?

The Witness: They are on a 90 day probationary 967 period, from the time their initial assessment was paid.

Trial Examiner Dudley: I will overrule the objection. You may answer the question.

The Witness: What was the question?

Trial Examiner Dudley: Read the question.

(The question was read.)

A. Well—

Q. (By Mr. Walsh) What is the second declaration of principle of your Association?

Mr. Swiren: That is objected to upon the grounds stated for the objection to the previous question.

Trial Examiner Dudley: Overruled.

The Witness: Our constitution and by-laws are in the process of revision. The revision has not been approved by our membership, and our executive officers.

Mr. Walsh: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: I will hand you this, to refresh your recollection.

The Witness: I just stated that our constitution was in the process of being revised. There are a lot of things in here that do not apply—or will not apply probably ten days or two weeks from now.

Q. (By Mr. Walsh) At the time the application for membership of this company was filed, you were operating 968 under the principles, the declaration of principles that appear in the Senate Committee testimony, is that right?

Mr. Swiren: That is objected to. That does not have anything to do with this respondent. In fact, the testimony is directly the opposite.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh) Mr. Abbott, will furnish me a copy of that constitution, and of the by-laws and the declaration of principles as they were at the time this application was filed?

A. I do not have one with me, for the reason that—

Q. I did not call for it in the subpoena.

A. —you did not call for it in the subpoena.

Mr. Walsh: If you will furnish that, Mr. Smith can send it out, and we will put it in the record.

The Witness: All right.

Mr. Swiren: Not with out consent, of course.

Mr. Walsh: We did not expect you to consent, Mr. Swiren.

Trial Examiner Dudley: You are objecting at this time to what?

Mr. Swiren: I just wanted to make it perfectly clear that a constitution with which we were not familiar, of a body of which we were not a member, does not go into the record with our consent.

Trial Examiner Dudley: You are stating that you will 969 object when it is offered in evidence?

Mr. Swiren: I do not want Mr. Walsh misled.

Trial Examiner Dudley: The Examiner will note your intention.

Q. (By Mr. Walsh) Mr. Abbott, will you also furnish me a copy of the application of this corporation for membership in your Association, so I can give this copy back to Mr. Swiren?

A. Yes.

Q. Now, during the time Johnstone was in the service of this corporation, did he report directly to Mr. Aitchison, or did he report to the company, or did he report to the Association, and the Association in turn report to Mr. Aitchison?

A. He reported directly to me up through the month of October. After that he reported directly to Mr. Aitchison, until about the 1st of December.

Q. Was there any reason for that change in the matter of reporting?

A. Yes. On the 1st of November we received a subpoena from the Senate Committee.

Q. In response to that subpoena you changed the form of reporting, is that right?

A. We had, a few days previously, for the reason that we had received word we were to be drawn into the hearing.

Q. What reason did the company assign to you for its 970 discontinuance of this service?

A. The man's wife had developed some mental trouble; due to the fact he had been off so much, the foreman complained about it, and Mr. Aitchison, I believe, decided to drop him.



Q. Is Johnstone still in your employ?

A. He is not.

Trial Examiner Dudley: What was the answer?

The Witness: He is not.

Mr. Walsh: You may inquire.

Mr. Swiren: No questions.

Mr. Walsh: That is all.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) Mr. Abbott, when did Mr. Johnstone leave your employ?

A. His service extended from August 17th until December 1st, 1936.

Q. You let him go from your Association as of December 1st, 1936?

A. Yes, that is right, yes, sir.

Q. Had he done work for you before you assigned him to the Fanstell Corporation?

A. He had not. I had known of his employment in other plants, and I called him in for Mr. Aitchison. We assigned him to this operation.

Q. He had not worked for or through you previously?

971 A. No.

Q. What was the nature of his employment by other plants about which you said you knew?

Mr. Swiren: If the Examiner please, we object to this line of inquiry, unless it is brought home to the respondent corporation.

Trial Examiner Dudley: The objection is noted.

The Witness: Repeat the question, please.

Trial Examiner Dudley: Read the question.

(The question was read.)

A. He had been employed as a machinist and tool and diemaker.

Q. (By Trial Examiner Dudley.) Had he been employed in any other capacity?

A. I recall that he said he had worked at one time for the Corporations Auxiliary.

Q. For the what?

A. Corporations Auxiliary.

Q. What is that? What does that mean? I do not know what that term means.

A. The Corporations Auxiliary is a detective agency.

Q. Where does it operate?

A. It is out of business.

Q. Where did it operate?

Mr. Swiren: We object to the entire line of inquiry, if the Examiner please.

972 Trial Examiner Dudley: The objection is noted.

Mr. Swiren: It does not have any pertinency.

The Witness: It had offices in all the principal cities of the country, east of the Mississippi River, I believe.

Q. (By Trial Examiner Dudley.) What was the date of its operation, approximately?

A. I have known of their existence for twenty years. They went out of business around the 1st of February, I believe.

Q. Do you know how long approximately Mr. Johnstone had worked for Corporations Auxiliary?

A. Some time during the world war period.

Q. Do you know for how long a time?

A. No.

Q. Referring back to the visit of Mr. Aitchison to your office on about August 15th, 1936, and to your subsequent assignment of Mr. Johnstone to the plant, would you tell me the arrangements which you had with the Fansteel Corporation for Mr. Johnstone's services at that time?

A. Mr. Aitchison indicated he wanted a man to go into the plant and make a general check-up as to production efficiency, and safety, and see if there was any dissatisfaction. If there was, he wanted to know what it was, so he could make an effort to correct it.

Q. What were your arrangements for Mr. Johnstone's services?

A. The company was to be billed at the rate of \$225  
973 a month, and this man's shop earnings would be credited against that amount.

Q. Was the \$225 per month paid to your Association?

A. It was, upon the rendering of an invoice.

Q. Did you send an invoice to the Fansteel Company once a month?

A. We did.

Q. For \$225?

A. With the shop earnings credited against the amount.

Q. Then they reported to you the amount of the shop earnings, or Mr. Johnstone reported to you the amount of the shop earnings?

A. Johnstone reported that.

Q. Johnstone reported that, and then you submitted a bill to the corporation for the balance?

A. That is right.

Q. And they remitted to you?

A. That is correct.

Q. Then did you pay Johnstone something out of the \$225— in addition to his shop earnings?

A. We did.

Q. Was your arrangement with the Fansteel Corporation in writing?

A. It was not.

Q. Was it by the exchange of letters or memoranda of any kind?

974 A. It was merely a verbal agreement.

Q. It was entirely a verbal agreement?

A. Yes.

Q. How much did you pay Mr. Johnstone?

A. \$200 a month.

Q. \$200?

A. Yes.

Q. The Association kept \$25 per month—

A. Yes.

Q. —for its own services?

A. Yes.

Q. Do you know of any time previous to this at which Mr. Johnstone had served as an expert on the various matters about which you and he have testified, and that Mr. Aitchison recalled, such as efficiency of production, and similar matters, other than the mere operations of the machines and the mere work of a diemaker?

A. Corporations Auxiliary handled similar work.

Q. His experiences with Corporations Auxiliary was the only experience that he had for this work, outside of his operation of the machines and the making of dies?

A. I believe so.

Trial Examiner Dudley: That is all.

Q. (By Mr. Walsh.) As a matter of fact, he had worked for Sherman Service, had he had?

975 A. I believe there was some reference made to that, yes.

Q. Do you know of any other detective agency for which he had worked?

A. No.

Q. Over how long a period have you known Johnstone?

A. He had been coming in to see us for about a year and a half previous to August 1936.

Q. Had you ever assigned him to any other job?

A. I had not.

Q. Then this is the only assignment he has ever had from your company, is that right?

A. That is correct.

Q. Sherman Service is an industrial detective agency, or was an industrial detective agency, was it not?

Mr. Swiren: We object to that, if the Examiner please. There is not even a tie-up between Johnstone and that. The witness said there was some kind of a reference to it, and that is all.

Trial Examiner Dudley: I will overrule the objection.

Mr. Swiren: Unless this witness knows there is a tie-up, and tells what it is so we can get the facts, I cannot see any basis for this speculation.

Trial Examiner Dudley: I will overrule the objection, and admit the testimony for what it may be worth.

Mr. Walsh: Read the question, please.

976 (The question was read.)

A. It was, at one time.

Q. (By Mr. Walsh.) Is it now out of business?

A. No. They are handling industrial engineering work at the present time. I think they operate under the name of Industrial Standards Corporation.

Q. Do they have a local office?

A. They do.

Q. Corporations Auxiliary ceased its operations in February of this year, is that right?

A. Sometime in the winter, yes.

Q. They were principally an industrial detective agency, were they not?

A. That is right.

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh.) As a matter of fact, Johnstone was an industrial detective, was he not?

A. I would not class him as such.

Q. You paid him the same rate that industrial detectives get, did you not?

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: What do you mean by "industrial detec-

ives"? I assume Examiner Dudley and you know, and possibly the witness knows, but I do not know what you mean.

The Witness: I do not know what he received—

Mr. Swiren: Just a moment. I would like to find out about this.

Mr. Walsh: Read the question, please.

(The question was read.)

A. I have no way of knowing what he received previously.

Q. (By Mr. Walsh.) Are you generally familiar with what industrial detectives are paid?

A. I am not.

Q. Are you generally familiar with what operatives of this character are paid?

A. I know how much we paid our own men, yes, sir.

Q. Do you know whether other companies pay better or pay less than you do?

A. I do not.

Q. Do you know what any other company pays for men of this type?

A. I do not.

Q. I will repeat my question: Johnstone is an industrial detective, is he not?

A. I would not consider him as such, no, sir.

Q. You would not?

A. No.

Q. In what way did he fall short, or was he long of that particular classification?

A. In this particular instance he was sent in to make an analysis of the production problems in the shop.

Q. Would the union activity of the men in the shop be one of the things he would concern himself with?

A. It was not discussed with him at the time.

Q. Did he file any expense accounts with you while he was on the job?

A. Merely for transportation, yes.

Q. Did he file any expense accounts in which he claimed reimbursement for dues paid to the union?

A. He did not.

Q. Do you know whether he paid any dues to the union?

A. I do not know whether he did or not. We paid him. I do not know what he did with the money.

Mr. Walsh: That is all.

Trial Examiner Dudley: Do you have any questions, Mr. Swiren?

Mr. Swiren: I have no questions.

Mr. Walsh: That is all.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley.) Mr. Abbott, I am not sure I understood your testimony on one point. You have testified that you sent him to Fansteel to make an analysis of production problems in the shop.

979 You have testified also that the only experience which he had that you know of was that of the operation of a machine and a maker of dies, and his experience with Corporations Auxiliary, which you have described practically as a detective agency.

Where are the facts upon which you based your judgment that he would be an expert on problems of production?

A. Any machinist or tool and diemaker who has had unlimited experience at his trade—almost any individual of that kind can go into any establishment, and he is bound to recommend some improvements, because no two concerns operate the same way.

Q. Does that give him a basis for judgment as to the transfer of personnel, including the promotion or demotion of foremen and managerial personnel?

A. He can be qualified to make recommendations; they would not need to be accepted.

Trial Examiner Dudley: I have no further questions.

Q. (By Mr. Walsh.) To your knowledge, had he ever worked in a plant at which tantalum was either manufactured or fabricated?

A. I do not believe there are any more than two or three plants in the country that make it.

Q. Do you know whether he had ever worked in such a plant?

A. I do not.

980 Q. You did not inquire of him, did you?

A. In this particular instance they wanted a machinist and tool and diemaker. There was nothing said about tantalum, or anything like that.

Q. I believe you heard Mr. Aitchison testify he recom-



mended that Mr. Welch be transferred from one position, to foreman of the tantalum fabrication department?

Mr. Swiren: I think in fairness to the witness and the testimony, it ought to be stated that what he testified was that he recommended that he be relieved of the supervision of the tool room, so that his activities could be confined to the division of tantalum fabrication.

Trial Examiner Dudley: The record will so show.

Mr. Swiren: There is no point in not giving the whole statement to the witness.

Mr. Walsh: The witness heard the testimony.

Trial Examiner Dudley: Is there a question pending?

Mr. Walsh: I will withdraw whatever question there is pending. I have no further questions.

Q. (By Trial Examiner Dudley.) What reports—let me phrase it this way: with reference to the reports which Mr. Johnstone submitted to you up until I believe it was October 1936, do you keep copies of those reports?

A. We did not. It had been our custom to destroy them, every time they were written up.

981 Q. Do you have any reports now concerning the activities of Mr. Johnstone at the Fansteel Corporation?

A. I do not.

Q. You have no written evidence of what he did, the kind of work he performed, where he went, or his observations and recommendations?

A. I do not.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren.) Did I understand you to say that Mr. Aitchison asked you for a machinist and tool maker?

A. He did.

Q. Did he say anything to you about wanting to get the point of view of the man at the machine, or the man at the bench?

A. He did. He said he wanted a general analysis of conditions, in the shop, as he found them.

Mr. Swiren: That is all.

Trial Examiner Dudley: That is all. Thank you very much.

(Witness excused.)

Mr. Swiren: I now move that all of the testimony of Mr. Abbott be stricken as not being material to any of the issues in this case.

My first objection pertains—his testimony is divided into two classifications—to the testimony with respect to the National Metal Trades Association, which clearly is not material. There is no provision of the act here under 982 consideration that I know of that prohibits membership in the Association.

My second objection pertains to the employment of Johnstone. There is nothing in that respect that is in any way material to any of the provisions of the Act, or any of the acts charged in the complaint.

I think the entire testimony of the witness should be stricken.

Trial Examiner Dudley: It seems to me, Mr. Swiren, that the testimony of Mr. Abbott is connected up, in the present investigation, by reason of the application of the corporation for membership in the fall of 1936, and its admittance to membership in the spring of 1937.

It also is connected up because of the inquiry made by Mr. Aitchison, and also by reason of the information he gave about the nature of Mr. Johnstone, whose activities are under investigation.

Therefore I will overrule the motion.

Mr. Swiren: The testimony with respect to the National Metal Trades Association and its membership and constitution has nothing to do with Mr. Johnstone.

Trial Examiner Dudley: Your comments are noted for the record.

Mr. Walsh: Mr. Examiner, I had previously subpoenaed Mr. Henry B. Sayre for the production of certain production work material of this Association.

983 Those records have been produced by Mr. Abbott. I more that Mr. Sayre be excused from answering the subpoena.

Trial Examiner Dudley: Mr. Sayre is so excused.

Mr. Walsh: May we have a short recess?

Trial Examiner Dudley: Yes. We will take a short recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will reconvene.

Mr. Walsh: This is Mr. Lester Collins—

Mr. Swiren: Speak up a little louder, please, Mr. Walsh.

Mr. Walsh: This is Mr. Lester Collins, who desires to enter his appearance for the Amalgamated Association of Iron,

Steel, and Tin Workers of North America, Lodge 66, as provided by article 2, section 25 of the rules and regulations.

I would like to have that noted of record.

Trial Examiner Dudley: Does counsel for the respondent have any objection to the entry of Mr. Collins' appearance?

Mr. Swiren: No. We welcome it.

Trial Examiner Dudley: The appearance of Mr. Collins for Lodge 66 may be noted in the record.

Mr. Walsh: In case you did not observe it, Mr. Collins, this is our side of the table.

Mr. Swiren: We are not trying to entice him over to our side.

Trial Examiner Dudley: Are you ready to proceed now?

984 Mr. Walsh: Yes.

Trial Examiner Dudley: Call your next witness.

Mr. Walsh: I will call Mr. Kondrath again.

JOHN A. KONDRATH, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination.*

Mr. Walsh: This witness has been previously sworn, and has claimed his privilege.

Q. (By Mr. Walsh.) Mr. Kondrath, do you know a man by the name of Alfred Johnstone?

A. I do.

Q. I will ask you whether you signed him up as a member of Lodge 66?

A. I did.

Q. Do you remember when you received his application for membership?

A. I really don't remember the date, but it was shortly after he got employed at Fansteel.

Q. I will ask you whether he became an officer of the union.

A. No, he didn't.

Q. Did he take an active interest in union affairs?

A. He did.

Q. Just tell the examiner what he did in the union.

A. Well,—

985 Mr. Swiren: Just a moment. That is objected to unless it is shown to be by the authority of the respondent.

Mr. Walsh: I think probably it was within the apparent scope of his authority as an employee of your company—

Trial Examiner Dudley: You mean, you want to assume authority for all he did?

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: Do you want the corporation to assume authority for all that Mr. Johnstone did?

Mr. Swiren: No. If they want to bind the corporation, I think they must prove authority.

Trial Examiner Dudley: The objection will be overruled. The testimony may be admitted for what it may be worth.

Mr. Walsh: Read the question.

(The question was read.)

A. Well, every time there was any meeting to be called, why, we quit at 4 o'clock, and he would say, "Well, I should go to Chicago", he says, "but what is the difference?" He says, "I suppose my wife is drunk. I don't get to see her anyway. I might just as well stay here for the meeting."

Well, the meeting would not open up until 8 o'clock, or sometimes 8:30, and he would stay here. He did that a number of times. On one particular time there was a meeting at Chicago on the south side. I asked him if he cared to go.

"Oh, yes," he says, "I am very interested in labor meetings." He says, "In fact, I used to belong to the Federation of Labor in Chicago." He mentioned the Local number, but I don't remember the Local number any more. He came to that meeting, too.

He was very anxious for all meetings and everything. He wouldn't miss a meeting on a bet.

Q. (By Mr. Walsh.) I will ask you whether you heard him urging employees to strike.

Mr. Swiren: That is objected to. Counsel ought to know better than to suggest the answer in the question.

Trial Examiner Dudley: Objection overruled.

The Witness: Well, at one time he wanted to know how much members we have, and I told him we—

Mr. Swiren: Let us find out the time and place of that conversation, so we can follow it.

The Witness: Most of this conversation was in meetings, and sometimes in the shop.

Mr. Walsh: Go ahead.

Mr. Swiren: I submit we are entitled to have the time and place of any conversations that are going to be related in the testimony.

Trial Examiner Dudley: I will ask the witness to be as definite as he can in giving dates, times, and the places at which any of this conversation or action took place, about which he is going to testify.

The Witness: I couldn't give any date, because I 987 can't remember all the times that he said this, or I said that, or anything like that. It is too long of a time.

Q. (By Trial Examiner Dudley.) Tell us all that you can about what Mr. Johnstone did in connection with the union.

A. Well, he thought that if the union was strong enough, the only thing that would make them recognize it would be a strike, but we told him we didn't want to strike.

We told him we would like to have 100 per cent membership, so the company would realize that we really wanted a union and collective bargaining.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) Do you remember when it was that you had this last conversation with Mr. Johnstone, the one you mentioned last?

A. No, I don't remember.

Q. Do you remember approximately?

A. Well, it was before I got taken over in the office.

Q. You went over to the office in November, did you not? It was November 1st, or thereabouts, was it not?

A. No. It was around Armistice Day. It must have been around the first part of—

Q. Would you say that conversation took place in October 1936?

A. Yes, I would; about that time.

988 Q. About that period?

A. Yes.

Q. Then about that time you told him the union did not want to have a strike, is that right?

A. That is right.

Q. You did not call it?

A. No.

390 *Witnesses for National Labor Relations Board.*

Q. None occurred at that time?

A. No.

Q. By the way, was Johnstone on the bargaining committee?

A. No. How could he be? He wasn't there, on the bargaining committee.

Q. Well, I do not know who the officers and the committee were. Do you know any committee he was on?

A. No. He wasn't on any committee that I could remember.

Q. You were president of the local, were you not?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: You may call your next witness.

Mr. Walsh: Mr. Du Bois.

RAYMOND E. DUBOIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified 989 as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Will you state your full name, please?

A. Raymond E. DuBois.

Q. Where do you live?

A. Waukegan.

Q. You were employed by the Fansteel Metallurgical Corporation?

A. Yes, sir.

Q. What is your job down there?

A. Tool maker.

Q. How long have you been employed by the Fansteel Metallurgical Corporation?

A. Since Armistice Day, 1935.

Q. How long have you been a tool maker?

I learned the trade at the American Can in 1926.

Q. Since 1926 you have been a tool maker?

A. Yes, sir.

Mr. Walsh: Mr. Examiner, counsel for the Lodge is not



present at this time. I request you to advise this witness of his privilege, and ask him whether he claims it.

Trial Examiner Dudley: Does he know the nature of the privilege?

Mr. Walsh: I think he does. I have explained it to him.

Trial Examiner Dudley: Do you wish, Mr. DuBois, 990 to claim the privilege of immunity from any crimes, misdeeds, or illegal acts that you may have committed, about which you may testify during this hearing?

Do you know what I mean?

The Witness: Not altogether. I would like to have you make it a little more clear.

Trial Examiner Dudley: Normally speaking, a witness cannot be compelled in court to give testimony which might be used to incriminate him, that is, which might be used against him to convict him of a crime, misdemeanor, or other wrongful act.

The National Labor Relations Act provides, however, that a witness must give such testimony under subpoena, but if he requests the privilege, he cannot be held guilty of any such acts about which he testifies.

Do you want to claim the privilege of protection from any possible punishment for acts about which you will testify?

The Witness: Why, sure. All I know is the truth.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh.) I will ask you if you had a chance to work Johnstone work when he was employed at the plant.

A. Yes, sir; I did.

Q. I will ask you whether he appeared to be a good tool and die maker.

Mr. Swiren: That is objected to. I do not see that 991 that has any materiality, nor can we get anything but this witness' own conclusion.

Trial Examiner Dudley: The witness has testified that he has been a tool maker at least since 1926. Therefore, he should be capable of forming a judgment about Mr. Johnstones apparent ability.

Mr. Swiren: Perhaps he is, and perhaps he is not. I do not know why we should speculate as to whether he can form an opinion, merely because he has been a tool maker.

Mr. Keele: How can it possibly be material, as to whether the man was white, black, parted his hair in the middle, or on the side, or whether he was a good tool maker or not?

His instructions have been shown. It has been shown what he was there for. The question of whether or not he was an expert tool maker, it seems to me, cannot possibly be material here. I would like to hear counsel's views as to why he thinks it is material.

Mr. Walsh: I think there has been some testimony that this man is an expert in several fields. I would like to show that, at least, in the view of this witness, he was not an expert in the field for which he was employed, that is, that of being a tool and die maker.

We might draw an inference from that as to whether he was an expert in the field of plant supervision, and also an expert in the other fields concerning which there has been testimony.

Trial Examiner Dudley: I will overrule the objections as to its materiality, but I would suggest that Mr. DuBois perhaps had better qualify it by testimony as to the basis for his judgment, as to his ability to observe Mr. Johnstone's work, and so forth.

Q. (By Mr. Walsh) Mr. DuBois, you have worked at the trade of tool maker since 1926?

A. I have.

Q. Did you observe Johnstone as he pursued his daily tasks in the plant?

A. I did.

Q. I will ask you whether, in your opinion, he was a competent tool maker.

Mr. Swiren: The same objection.

Trial Examiner Dudley: Objection overruled.

The Witness: There is quite a story to that. May I answer by telling the story, or should I say "yes" or "no"?

Mr. Walsh: You may tell the story.

Mr. Swiren: I object to getting stories. Let us get the facts in answer to the question.

Trial Examiner Dudley: I assume the witness means by "story" that there is considerable information which he can give.

The Witness: Yes, actual happenings.

993 Trial Examiner Dudley: We appreciate getting all the information we can. We will appreciate your giving us all the information you can along this line.

The Witness: There was several times in the shop when work had been given to Mr. Johnstone, when his ability wasn't sufficient to carry the job to the point of satisfaction, due to

Mr. Haskell's and Mr.—his name is the same as my name, only it is in German—well, anyhow, he was metallurgical man down there.

Anyway, he couldn't do it to their approval, because there has been many a time they would say, "Let Frenchy or one of the other fellows finish the job" or "Let Frenchy or one of the other fellows do the job", because he couldn't get the molds to line.

They was pouring a new metal called haskelloid. They was making these molds out of graphite, and they had to match the two halves and line them perfectly, so that the metal would come out in proper shape.

There were several other things down there that he spoiled, and there was quite a controversy about it. Whether it was lack of experience or nervousness, I couldn't tell at that time.

Q. (By Mr. Walsh) Did you form an opinion as to his ability as a tool and die maker from having seen him work?

A. Well, my opinion was—

Mr. Swiren: Just a moment.

The Witness (Continuing): —he wasn't so very good at it.

994 Mr. Swiren: The answer to that question is "yes" or "no."

Q. (By Mr. Walsh) Answer that question "yes" or "no", please.

Mr. Swiren: I ask that the question go out, and I want an opportunity to be heard on what his opinion is.

Trial Examiner Dudley: He asked—

Mr. Swiren: He has already made a statement which I think ought to go out, because it is not responsive to the question. The question was whether he formed an opinion or not.

Q. (By Trial Examiner Dudley) Did you form an opinion?

A. Give me the question again.

Mr. Swiren: I am asking, Mr. Examiner, that the answer be stricken as not responsive to the question, and that the witness be not permitted to answer another question until there is a ruling on that motion.

Trial Examiner Dudley: I will grant your motion.

Mr. Walsh: Read the last question, please.

(The question was read.)

Mr. Swiren: You may answer that "yes" or "no."

Trial Examiner Dudley: Do you understand the question?

The Witness: I can't answer that.

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Mr. Walsh: Well, let us put it another way:

Q. (By Mr. Walsh) Did you make up your mind whether he was a good tool maker or a bad tool maker?

A. I did.

Q. Well, was he a good tool maker or a bad tool maker?

995 Mr. Swiren: We object.

Trial Examiner Dudley: Objection overruled.

The Witness: Well, he was a long ways from being a good tool maker.

Q. (By Mr. Walsh) Well, what kind of a tool maker was he?

A. Well, I never classed myself as first class, but there was a lot of things that come up down there I am sure I could have done that he fell down on.

Mr. Walsh: You may inquire—just a moment. I have one more question.

Q. (By Mr. Walsh) I will ask you whether or not Johnstone took an active interest in the work of the union.

Mr. Swiren: That is objected to as calling for a conclusion. We ought to have the facts.

Trial Examiner Dudley: Objection overruled.

The Witness: He did.

Q. (By Mr. Walsh) What did he do or say with reference to the union, and its activities?

A. He seemed to be very radical at times.

Q. What do you mean by "radical"? What would he say?

A. He would want us to force the issue. He was going to get laid off, he said, and he was laid off, and he wanted us to go on strike in order to reinstate him in his position.

Q. Did he make any other remarks about striking?

A. Well, there were several times he made remarks  
996 to me. I can't just exactly remember them. I can remember the answer I gave him, that I told him.

Q. But you do not recall just what wording he used, is that right?

A. No, sir; I don't.

Q. What was the general tenor of his remarks? What were the remarks about?

A. Well, the remarks were to get us to take action in his behalf. I told him, according to his ability to work, I didn't see how we could.

Q. What action did he want you to take?

A. To strike, and to force an issue to reinstate him.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren) Mr. DuBois, did you ever call a strike at his request, Johnstone's request?

A. No.

Q. You did not follow his advice with respect to calling a strike, then, is that right?

A. No, sir.

Q. His request that you call a strike for getting him reinstated came after December 1st, 1936?

A. The what?

Q. You knew that Johnstone was discharged on December 1, 1936, did you not?

997 A. I don't know when he was discharged.

Q. You saw he was not around after that date, did you not?

A. I presume so. I don't remember the exact time.

Q. This request for a strike to get him reinstated came when, with reference to December 1, 1936?

A. I know it was along during the last part of the time he was there.

Q. That was toward the end of November 1936?

A. I don't remember the date.

Q. At that time he came and asked to get some action from the union to get him reinstated?

A. He did, as a member of the union.

Q. Why did he ask to be reinstated, if it was before he had gotten out, or before he had been discharged, do you know?

A. I couldn't tell you that.

Q. You did not ask that at the time, did you?

A. No, I didn't.

Q. You did not say to him, "Why, Johnstone, you are still working. Why do you want us to take action to get you reinstated?"

A. At times I wouldn't say anything.

Q. You did not say that, or anything to that effect to that, is that right?

A. I didn't say what?

Mr. Swiren: Read the question, Mr. Reporter.

998 (The question was read.)

A. I didn't say anything.

Q. (By Mr. Swiren) You said nothing to that effect?

A. No.

Q. Who is the Mr. Haskell you referred to in your direct examination?

A. He is a fellow by the name of Roy Haskell, who is working in the laboratory down there.

Q. By the way, where have you worked since 1926?

A. Well,—

Q. Let us start with 1926. Where were you working then?

A. At the American Can.

Q. Were you in the tool room there?

A. Yes.

Q. How long did you stay there?

A. I was there about 3 years.

Q. That brings us to 1929, is that right?

A. Yes, sir.

Q. Where did you work then?

A. At the Western Electric.

Q. At which plant?

A. 22nd and Cicero, Chicago.

Q. How long did you remain there?

A. About 2½ years.

Q. Did you do any work on cast alloys and vascoloy ramet at either of those plants?

A. No, sir.

Q. Where did you work after you left Western Electric?

A. I was a maintenance man building dams up in northern Michigan.

Q. I take it you did not encounter vascoloy ramet and cast alloy work there, did you?

A. Not much; no, sir.

Q. Then where did you work?

A. I went from there over to Commerce Pattern in Detroit.

Q. How long did you remain there?

A. No, wait a minute. I was at Motor Products in Detroit, on Mack Avenue.

Q. How long did you work for Motor Products?

A. About 1½ years.

Q. Did you voluntarily leave?

A. No. There was a strike over there.

Q. By the way, did you leave the other jobs you just referred to, voluntarily?

A. Yes, the one at Michigan, but not at Western Electric. I was laid off there during the depression.

Q. Where did you go from Motor Products?



A. Commerce Pattern.

Q. How long did you work there?

A. Well, I can't tell you that.

1000 Q. How long, approximately?

A. It wasn't very long; I wasn't there very long.

Q. Did you voluntarily leave there?

A. I did.

Q. Where did you go then?

A. To Johnson Motor Company.

Q. That is in Waukegan?

A. Yes.

Q. How long did you work at Johnson Motors?

A. That I don't know.

Q. Approximately how long?

A. It seems to me it was about 6 or 7 months.

Q. Then where did you go from there?

A. To Amco, down in North Chicago.

Q. How long did you work there?

A. Not very long. I don't know; it was just a couple of months.

Q. About 2 months?

A. That is all.

Q. Then where did you go from there?

A. Over to Fansteel.

Q. By the way, with reference to your last job before you came to Fansteel, did you leave that one voluntarily or were you discharged?

A. I think I was laid off down there.

1001 Q. You draw a distinction between a discharge and a lay-off, do you not?

A. I do.

Q. You were not asked to come back there, were you?

A. No.

Q. You were doing tool and machine shop work there?

A. Yes.

Q. Tool room work?

A. Yes.

Q. At the Fansteel plant you got acquainted with Vascology Ramet and cast alloy work, did you not?

A. Very little.

Q. You did some of it?

A. There was quite a little.

Q. And there was some graphite work in connection with those items?

A. Graphite is a powder or dust—

Q. Yes.

A. —not a metal.

Q. I know that. However, you use it.

A. I know that.

Q. You use it in connection with Vascoloy Ramet and cast alloy work, do you not?

A. Yes.

Q. That is not commonly used with respect to ordinary tool work, is it?

A. No.

Q. That is unusual?

A. Yes.

Q. You grew more proficient with those items as you worked along at Fansteel in the tool room, did you not?

A. What do you mean "proficient"?

Q. You mean, you do not understand the word?

A. That is right.

Q. Were you able to handle those materials better as the months wore on?

A. Oh, sure.

Q. Your experience was very helpful in that respect?

A. Yes, sir.

Q. And the difficulty you referred to between Johnstone and Haskell was in connection with graphite work, was it not?

A. Between who?

Q. Between Haskell and Johnstone, when Haskell was not satisfied with Johnstone and his work; that was in connection with some graphite job, was it not?

A. That is right.

Q. Is that graphite work an ordinary machinist's job?

A. Yes, sir. I would say so.

Q. You think that the average machinist in most plants can handle that very efficiently and effectively without any previous experience in graphite?

A. I do.

Q. Are you sure of that?

A. I would say so, yes.

Q. Tell me, in view of the fact you did not encounter it before you went to Fansteel, how you are so sure of that statement.

A. Whenever you place two pieces of metal together to make a perfect sphere, or a perfect square, or anything like that, as soon as it matches, that is all there is to it.

Q. Graphite is not a metal, you just told me a little while ago.

A. No.

Q. It is a powder.

A. Yes, sir.

Q. Matching metal has nothing to do with graphite. I am talking about graphite. The use of graphite is something the ordinary machinist is quite familiar with, is that right?

A. Well, I would not say so.

Q. I understood you to say so a few minutes ago. Let us get it straight.

You say now that the use of graphite is not an ordinary and usual job for a machinist, is that right?

A. (No answer.)

Q. As an expert, you do not have to take that long 1004 to tell me whether it is an ordinary part of his work or not. You know that, as part of your daily work. Let us have a more prompt answer.

A. Working on a machine, or working on graphite, would be the same as writing on a chip, or writing on a piece of paper.

Q. You do not think there is any difference. Am I to assume that, from your two answers, is correct now?

A. I can't answer you "yes" or "no." That is the reason I say—

Q. That is why you answered me "yes" and "no", is that right?

A. That is right.

Q. Did you say—by the way, was Johnstone an officer of Lodge 66?

A. No, sir.

Q. Was he a member of these committees?

A. No, sir.

Q. You have some interest in the outcome of this proceeding, have you not?

A. Only to be reinstated.

Q. Was your union membership known to the officers of the company, during the time you were employed by the Fansteel Metallurgical Corporation?

A. What was that?

Q. Was your union membership in Lodge 66 known?

A. I would say "yes."

1005 Q. You were never discharged or threatened with discharge by reason of that, were you, prior to February 17th, the evening of February 17th? February 17, 1937.

A. I was.

Q. You were?

A. Yes.

Q. Tell us the circumstances.

A. A foreman by the name of Groll threatened to replace me many times.

Q. Was one of the occasions when you were using a saw on a metal bar that required a considerable time to saw through?

A. (No answer.)

Q. Let me make it more specific, so you and I will understand each other, Mr. DuBois:

Do you remember the occasion when you started a 5 or 5½-inch cold rolled bar of steel through a saw in your department, and a discussion with your foreman ensued at that time?

Tell me whether or not you remember the occasion.

A. I remember the occasion, but there wasn't any 5 or 5½-inch diameter piece of cold rolled.

Q. What kind of a piece was it?

A. A 3-inch diameter piece of cold rolled.

Q. That takes some little time to saw through, does it not? It takes some little time for the saw to go through, does it not?

1006 A. Not long.

Q. How long would you say, as an expert?

A. I can't say.

Q. Well, if I were to suggest about 45 minutes to an hour, would you say that is about right?

A. That depends upon the pressure of the saw, the speed of the saw, and such as that.

Q. Well, how long would it take, bearing in mind all of the factors you had before you at that time?

A. Well, I couldn't say. I never timed it.

Q. You sat down to wait for the bar to go through the saw, and at that time Mr. Groll came along and criticized you for that, did he not?

A. I did.

Mr. Walsh: I object to that. I believe his testimony here was that the saw was run through the bar—

Mr. Swiren: I do not know how it works.

The witness, I assume, will correct me if that is a serious error.

Mr. Walsh: I am afraid it is serious.

Mr. Swiren: Are you an expert, too, by the way?

Mr. Walsh: No. I am just a lawyer.

Trial Examiner Dudley: I will overrule the objection. Proceed with the questioning.

Mr. Swiren: Read the question.

1007 (The question was read.)

A. I did.

Q. (By Mr. Swiren) He criticized you at that time?

A. He did.

Q. He told you that you ought to go about some other work while you were waiting for the bar to go through, did he not?

A. Yes, I think he did.

Q. That is one of the instances you have just referred to in your suggestions as to threats of discharge, is that right?

A. I just merely told him that I only run one machine at a time, and that I didn't have hands enough to run three or four.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. I think so.

Q. (By Mr. Swiren) Are there any others that you can think of at the moment?

A. Yes, there was.

Q. Tell us the time. How many others can you think of?

A. There is just one I think of pretty distinctly.

Q. That is the one I have just referred to? That is the one I have just referred to, that you have described? Or is there another one?

A. There is another time.

Give us the approximate date.

Q. When was the other time?

1008 A. There was a time—do you want me to relate this?

Q. I want the approximate time, the approximate date.

A. I can't give you the date.

Q. Tell us approximately.

A. I have no idea.

Q. Well, you know whether it was in 1935, do you not?

A. (No answer.)

Q. Do you know whether it was in 1935 or not?

A. No. It wasn't in 1935.

Q. Do you know whether it was in 1936 or not?

A. I think it was sometime after the 14th of November 1936.

Q. What happened then?

A. Prior to the time Mr. Groll came into the picture, whenever there was a small job to be done, to improve the efficiency of the concern, we had always taken it, and taken the opportunity to do what we saw fit in order to help the rest of the fellows working in the plant, especially those that were working on piecework.

There happened to be a little fixture set in a die that stamped a point on two sides at the same time. There was a fellow by the name of Boley running the machine, and he said it didn't line up properly, and he asked me if I could do anything about it.

1009 I told him I would see, and I would do what I could.

I thought perhaps it would take a couple minutes time, and I went ahead and did it. After getting the man back to work, he asked me to make a little guard in order to keep his fingers out of the punch press, so for safety's cause, I made that, and while I was making it, Mr. Groll bawled me out.

I told him, "Mr. Groll, I thought I was helping the plant, and helping you, and helping the efficiency of the man so he could make his money." Well, one thing led to another, which led to the encounter between Groll and I at the time of the hacksaw.

Q. You did not ask Mr. Groll's permission to do that job before you did it, did you?

A. Prior to that—

Q. Did you, or did you not ask his permission? Do not make a speech about it. Just give me an answer.

A. I didn't.

Q. All right. Are you a foreman in that plant, by the way? I mean, were you at that time?

A. I was not.

Q. Was it your duty to select the work to be done by you or the other men in that department? Was that your function?

A. It was not.

Q. All right. Tell us of any other incidents that you  
1010 can recall with reference to these threats of discharge.

A. (No answer.)

Q. Were there any others?

A. Well, that is all of any importance, although it was pretty near an every day occurrence.

Q. You mean, you were not working in very close harmony with the foreman, is that your point? You were not getting along very well?



A. We were getting along all right as long as he would leave me alone.

Q. You were getting along all right as long as he was not giving you any instructions or supervision. I see.

Prior to the evening of February 17th, 1937, you were not discharged by the Fansteel Metallurgical Corporation, were you?

A. (No answer.)

Q. You had better speak up so the reporter can hear you.

A. No, sir, I wasn't.

Q. That evening, about six o'clock was the first time you got any information of any discharge since the time you began working for the company, is that right?

A. What evening is that?

Q. The evening of February 17th.

A. I never got no information to that effect at any time.

Q. You never heard about it?

1011 A. Well, as I told you before—

Q. You never heard, while you were in the buildings from the 17th of February to the 26th of February, 1937, that you had been discharged?

A. (No answer.)

Q. You had better speak up, because the reporter does not have two pairs of eyes.

A. As I told you before,—

Q. What is that?

A. As I told you before, I heard rumors. That is all I know. I never heard anybody tell me that.

Q. You told me that in another case. These gentlemen were not all present there, so you had better tell it again. They all do not have the same information that I have.

You heard rumors?

A. I heard rumors.

Q. You heard rumors while you were in the plant that you had been discharged the evening of February 17th, but you did not know definitely about it?

A. I didn't.

Q. You suspected those rumors were correct, did you not?

A. You hear rumors, and some you take for facts, and some you don't.

Q. Let us talk about this one. Did you take that one to be true?

1012 A. No, I didn't.

Q. You did not?

A. No.

Q. You were quite active in the work of Lodge 66, were you not?

A. Well, I attended quite a few meetings, but then I wasn't any more active than anybody else.

Q. Were you a member of the so-called bargaining committee?

A. At later stages, yes.

Q. Were you one of the members of that committee which met on the evening of February 16th, 1937, the night before the sit-down?

A. Why do you mean by "the committee that met"?

Mr. Walsh: I object to that, your Honor, unless it be shown that there was a committee that met.

Mr. Swiren: That has been shown by 14 witnesses so far.

Mr. Walsh: No, it has not. There was not anything mentioned about that.

Mr. Swiren: The evidence shows that there was a meeting of the bargaining committee on the evening before, February 16th.

Mr. Walsh: I do not recall that particular testimony.

Mr. Swiren: I am afraid that is the fault of your recollection, Mr. Walsh, and not the fault of the record.

Trial Examiner Dudley: Mr. Swiren, suppose you ask him in the customary manner if there were meetings, and what happened, and so forth.

Mr. Swiren: Of course, he could only know about that if he were there. That is why I went right to the meat of the thing.

Q. (By Mr. Swiren) Did you attend a meeting of the bargaining committee or any other committee or any other branch of Lodge 66 on the evening of February 16th?

A. I don't recall that I did. I don't remember the time. That is, I don't recall the time.

Q. Did you attend a meeting of the lodge about a week before the sit-down?

A. I did.

Q. Yes. Then did you attend a meeting of the bargaining committee subsequent to that date, before the group took possession of the buildings, buildings 3 and 5?

A. I did not.

Q. You did not attend it?

A. Not that I remember of.

Q. Well, were you ever informed that there was a meeting

on the evening of February 16th of the bargaining committee of Lodge 66?

A. I don't recall, no.

Q. Did you ever learn that you were designated by the bargaining committee to take charge of propaganda in 1014 connection with the proposed strike?

A. To take charge of propaganda?

Q. Yes.

A. I think there was something said about my being propagandist. I don't know what it was.

Q. There was something said about that?

A. Yes.

Q. Do you not remember just when that occurred, where, or who said it?

A. No, I don't remember when it was.

Q. Did you do anything in performance of your duties as propagandist?

A. No.

Q. You never discharged that responsibility, I take it?

A. No. There was a lot of propaganda, and gossip, and rumors, as I say. I don't know.

Q. You did not contribute to it?

A. No.

Q. I see. Then the following day, on the afternoon of February 17th, did you participate in a meeting of the so-called bargaining committee in the chemical building of the Fansteel plant?

A. I did.

Q. That was the meeting at which it was determined to take over buildings 3 and 5, is that right?

1015 A. I wouldn't say that, no.

Q. When you left that meeting, where did you go?

A. I went over and sat down by the machine.

Q. Where? In what building? In the Chemical building?

A. No; building 3.

Q. You went from the chemical building to building 3?

A. Yes.

Q. You sat down by your machine?

A. Yes.

Q. On a bench, or on a chair?

A. On a stool.

Q. A stool?

A. Yes.

Q. How long did you remain sitting on that stool?

- A. Well, until after four o'clock.
- Q. Did you talk to anybody while you were sitting on that stool?
- A. Not that I remember; maybe yes, and maybe no. I don't remember.
- Q. You just sat there, so far as you can recall?
- A. I don't know.
- Q. Were there other men about—
- A. It was pretty exciting at that time.
- Q. Were there other men about you at that time?
- A. Come to think of it, I think we were upstairs. I  
1016 think I went upstairs, and then downstairs. I don't  
know where I went.
- Q. With the stool?
- A. No, not all the time. Sometimes I would come back  
and sit down, and then get up and go. I don't know where I  
went.
- Q. So you left your stool a few times during that period?
- A. Yes.
- Q. Did you do anything besides walk up and down? Did  
you say anything to anybody, or do anything?
- A. It is possible.
- Q. You do not have any recollection about it at the mo-  
ment?
- A. Not of any direct conversation.
- Q. Did you not carry on your normal work while you were  
in that building, did you?
- A. No, not at that time.
- Q. By the way, you remained in the building day and  
night from February 17th to February 26th—
- A. Yes.
- Q. —1937?
- A. Yes.
- Q. You ate there and slept there, is that right?
- A. Yes.
- Q. What did you do after four o'clock on February 17th?
- A. Probably the same thing as I did before four o'clock.  
I don't know what it was.
- 1017 Q. Give us your best recollection.
- A. That I can't tell you.
- Q. You did not teach anybody how to run machines, did  
you?
- A. No.

Q. You were not conducting any classes as an expert machinist?

A. No, sir.

Q. Tell us what you did do?

A. Well, I don't know. I didn't do anything. I just hung around, that is all.

Q. Did you do anything but that all the time you were in the plant from the 17th to the 26th of February?

A. That is all I remember of now.

Q. You just hung around?

A. That is about all there was to it. We couldn't do much else, but we can eat and sleep.

Q. Were the normal operations of the plant being carried on in building 3 during that period?

A. No.

Q. None of the women that were ordinarily employed in that building were there, were they?

A. No, sir.

Q. Or the foremen?

A. No, sir.

Q. Between the time you left the chemical building 1018 and the time you went into building 3, did you go and consult with any member of the management or the company?

A. I did not.

Q. You did not go and ask permission to remain in building 3, did you?

A. No.

Q. You did not receive any such permission from the management or any officer of the company, did you?

A. No, sir.

Q. As I understand it, from the time you and the others took over building 3 and building 5, production in those buildings ceased, that is, from February 17th, 1937 at about two-thirty o'clock in the afternoon, until the morning of February 26th, 1937, when you left the buildings.

Is that right?

A. I didn't see anything in the way of operations, no.

Q. If there had been any material operations you would have seen them in that time, would you not?

A. I didn't see any, no.

Q. Is that right?

A. I didn't see any.

Q. I say, you would have seen any material operations of production going on, would you not?

A. I think so, yes.

Q. What were you engaged in during the period you  
1019 stayed in the building, in building 3, from the 17th to the 26th of February?

A. What do you mean "engaged"?

Q. What were you doing there?

A. Why, we were there. They called it a sit-down strike, to protect your job.

Q. You were holding these buildings, were you not?

A. I beg your pardon?

Q. You were holding buildings 3 and 5?

A. I wouldn't say "holding them", no.

Q. You did not see the sheriff or any of his deputies there during that period, did you?

A. Oh, yes; lots of them.

Q. Did you hear any rumors to the effect that the sheriff was trying to get into the buildings and evict you and the others who were in the buildings?

A. I think so.

Q. You heard about that?

A. I heard rumors, yes.

Q. You saw the sheriff trying to get into the buildings, too, did you not?

A. No, sir, I didn't.

Q. Did you hear rumors about his trying to get into the buildings?

A. I did.

1020 Q. You saw that he did not succeed in getting in, did you not, at least as far as building 3 was concerned?

A. I heard that he didn't.

Q. You did not see him or his deputies come into the building?

A. No, I didn't.

Q. You did not see any officers or the attorneys for the company effect an entrance into the building, either, did you, during that period?

A. No—yes, I did. I saw a couple of them come in there.

Q. You saw Luther Henry and Whitey come in in the afternoon or evening of the 17th of February, is that right?

A. That is right.

Q. Did you see anybody come in after that date?



A. No. I don't think so.

Q. When the sheriff came to get into the buildings you went downstairs, took away the barricades and opened the doors so he could come in, is that right?

A. I wasn't around. I don't know.

Q. You did not do that, did you?

A. No.

Q. You did not see anybody do it?

A. No, sir.

Q. Did you ask anybody to do it?

A. No, sir.

1021 Q. But you were not trying to keep the sheriff or the company from taking possession of those buildings, were you?

A. I weren't what?

Mr. Swiren: Read the question.

(The question was read.)

Q. (By Mr. Swiren.) You and the other men in the building, I am referring to.

A. I was inside; that is about all I can say.

Q. Is that the best answer you can give to that question?

A. Well, we didn't want—I would like to have you ask me that question again.

Mr. Swiren: Read it again, please, Mr. Reporter.

(The question was read.)

A. No; I wasn't trying to keep them from taking possession.

Q. (By Mr. Swiren.) You and your associates in the building did not care whether they came in or not, did you?

A. Oh, yes.

Q. You did?

A. Sure.

Q. Your desire was to have them come in, or not to have them come in, or which?

A. We didn't think it proper for them to be in at that time.

Q. You thought it was proper to keep them out at that time?

A. Until our union was recognized.

Q. Yes.

1022 A. Yes.

Q. By the way, did anybody advise you that was proper?

A. No.

Q. You just formed that judgment yourself personally?

A. That is just my opinion, yes.

Q. You did not discuss that idea, or that thought with anybody else in the building, did you?

A. Not that I remember of.

Q. That was only your personal idea. You do not know what ideas the others entertained in the building, do you?

A. No, sir.

Q. I take it that the entrance of gas into the building, thrown in by the sheriff's deputies on the morning of the 19th, convinced you that the sheriff wanted you out of there, did it not?

A. I think so, yes.

Q. That was a little stronger than the rumors you had heard?

A. Yes.

Q. Did you leave when that information came to your mind?

A. I did not.

Q. You stayed on?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

1023 (Witness excused.)

Mr. Walsh: If the Examiner please, I suggest we adjourn at this time.

Trial Examiner Dudley: Very well. We will adjourn at this time until nine-thirty tomorrow morning.

(At 4:45 o'clock p. m., June 14th, 1937, and adjournment was taken until Tuesday, June 15th, 1937, at 9:30 o'clock a. m.)

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1027 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

\* \* (Caption—XIII-C-80) \* \*

Circuit Court Room, County Building,  
Waukegan, Illinois,

Tuesday, June 15, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the  
National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One  
North La Salle Street, Chicago, Illinois, by Max  
Swiren, Harold M. Keele, Suite 2525, One North La  
Salle Street, Chicago, Illinois; and Sidney H. Block,  
Waukegan, Illinois, on behalf of Fansteel Metallur-  
gical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge  
66, Amalgamated Association of Iron, Steel and Tin  
Workers of N. A.

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## PROCEEDINGS.

Trial Examiner Dudley: Let the record show that the hearing is reconvened at this time.

Mr. Keele: May the record show, if the Examiner please, that it is stipulated and agreed by and between counsel for respective parties hereto, that cross examination of witnesses on matters not covered by the direct examination may be reserved until a later time; and that counsel for the Board, Mr. Walsh, will produce such witnesses whom he has examined in chief, for further cross examination upon the request of counsel for the respondent.

Mr. Walsh: Yes.

Mr. Keele: Thank you.

Trial Examiner Dudley: That agreement is quite satisfactory to the Examiner.

Mr. Walsh: Mr. Fagan. This witness has not been sworn, your Honor.

THOMAS E. FAGAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Will you state your full name, please.

A. Thomas E. Fagan.

Q. Where do you live?

A. Waukegan, Illinois.

1029 Q. Are you employed by the Fansteel Metallurgical Corporation?

A. I was.

Q. When were you first employed there?

A. In June, 1917.

Q. And you have been employed there ever since?

A. (Nodding head "Yes.")

Mr. Walsh: You will have to speak out loud, Mr. Fagan, so that the reporter can hear you.

A. Yes.

Q. (By Mr. Walsh.) What is your job down there?

A. Well, the last time I worked there, I was a contact cutter, but I was pushed around through the whole department, and any times that fellows would be off, I would be run in on their jobs.

Mr. Collins: Mr. Fagan, you were subpoenaed to appear here this morning, were you?

The Witness: Yes.

Mr. Collins: Do you wish to claim your privilege under Section 11 Sub-section 3 of the United States Labor Relations Act? Do you want to claim your privilege against self-incrimination?

The Witness: Yes.

Mr. Kelle: Your Honor, may the record show that counsel for the witness, Mr. Collins, has just examined him.

1030 Trial Examiner Dudley: Yes. Mr. Collins' appearance was entered yesterday, Mr. Reporter. The privilege is granted the witness.

Q. (By Mr. Walsh.) Mr. Fagan, on or about September 10th, while you were working in the shop, did you have some talk with Mr. Anselm?

A. I did.

Q. I will ask you to tell the Examiner just what Mr. Anselm said to you, and what you said to Mr. Anselm.

A. Well, shortly after dinner, on September 10th, Mr. Anselm come into the cutting room and signaled me out, and called me up to the foreman's desk; and he had our contract that the boys presented to the office, and he also had another paper that he was getting signatures on.

Q. Do you know what that paper was?

A. Well, I couldn't specify exactly, but it was something for making up a different union.

Q. All right. Go ahead.

A. And he said, "Earl, did you read this contract?" I said, "Yes." Then he says, "Just read it over." I read it over; I sat right up on Bill Chiswell's desk—that was our foreman—and I read it over; and I says, "There is no court in the land wouldn't hold us to this if we put our signatures on it." And he started telling me about the C. I. O.; and that if I would quit, in a couple of years time it would be  
1031 forgotten. I took my billfold out of my pocket, and he saw my orange card.

Q. What was your orange card?

A. My union card.

Q. Yes?

A. And I said, "I couldn't do that. But I am only one out of seven men in here."

Q. Referring to your department?

A. Referring to my department; there was seven of us cutting on that day.

Q. Yes.

A. I said, "Call them all up here; take us over to the office, and talk. I am not running this thing. I have not got nothing to do with it, only that I am a member." "No", he says, "I will tell you; I have lost a lot of time this morning." He says, "I will give each of you five minutes apiece." He says, "I want to break this thing up."

Q. Referring to what?

A. To the union, to the C. I. O.

Q. Yes.

A. (Continuing.) And he says, "I will give you five minutes apiece." So he called Clarence Dreyer next, and I went back to my machine and sat down and went to work. Then in the meantime, as I seen it, Clarence Dreyer called Ted  
Daluga up, and their conversation I didn't hear.

1032 Mr. Walsh: All right. You may inquire.

*Cross-Examination.*

- Q. (By Mr. Keele.) What did you say your name was?  
 A. Thomas Fagan; Thomas E. Fagan.  
 Q. You are not working for the company at the present time—the Fansteel Company, are you?  
 A. (No answer.)  
 Q. You know, do you not?  
 A. I am not down there.  
 Q. You have not been drawing any pay?  
 A. No, not from Fansteel.  
 Q. Where are you working?  
 A. For the State of Illinois at the present time.  
 Q. In what capacity?  
 A. Division of Highways.  
 Q. How long have you been working for them?  
 A. Three weeks.  
 Q. How long did you work for Fansteel?  
 A. I started to work for Fansteel in 1917, in June.  
 Q. You had known Mr. Anselm a long time, at the time of the conversation that you have referred to, had you not?  
 A. What is that?  
 Q. I say you had known Mr. Anselm a good many years, at the time of the conversation you have referred to, had you not?  
 1033 A. Quite a few years.  
 Q. Well, he had been there for a good many years, had he not?  
 A. Yes.  
 Q. Yes; and you had been there for a good many years.  
 A. Yes.  
 Q. And he had been plant superintendent for a long time, had he not?  
 A. Yes, sir.  
 Q. And he had just returned, had he not?  
 A. Yes, sir.  
 Q. He had gotten back two days before the time you talked to him?  
 A. Yes, sir.  
 Q. And this is the first time that you had seen him since his return?  
 A. No.  
 Q. When had you seen him before?  
 A. He had come in and shook hands with all of us.



Q. One by one?

A. You bet.

Q. When was that?

A. Well, I don't recall the date.

Q. Can you fix the date when he returned, and shook hands with all of you?

A. No.

1034 Q. How do you fix this date of September 10th?

A. Well, it just happened to be a point that I kept in mind.

Q. You just remember that it happened on September 10th?

A. Yes.

Q. What happened on the 9th, that you can tell us,—the 9th of September?

A. I don't recall.

Q. What happened on the 8th?

A. I don't recall that.

Q. What happened on the 11th?

A. I don't recall that.

Q. Or the 12th?

A. (No answer.)

Q. What is the answer?

A. I don't recall.

Q. What day of the week was the 10th?

A. I don't recall that.

Q. What else occurred on the 10th, besides your conversation with Mr. Anselm?

A. That is all that I know of.

Q. Where did you go that evening, after you quit work?

A. Where did I go?

Q. Yes, sir.

A. I don't know that.

Q. How is it that you can remember this one in-  
1035 stance so well, and fix the date, and yet you cannot tell us anything that occurred on the 8th, 9th, 11th or 12th, or where you went that evening, and yet you can remember this?

A. (No answer.)

Q. Will you answer the question.

A. What is the question?

Mr. Keele: Read the question to the witness, please, Mr. Reporter.

(The question was read.)

A. Well, I will answer that question this way; from the treatment that we had been getting down there, when something like that occurred, I thought it was good to keep that in my mind, that certain date.

Q. (By Mr. Keele.) You were building that, against the time when you were going to testify against the company, was that it?

Mr. Walsh: I object.

A. I didn't have any—

Mr. Walsh: Just a moment. I object to that, if the Examiner please.

Q. (By Mr. Keele.) Well, you had it in mind, did you not?

Mr. Walsh: That is merely a conclusion, in the mind of counsel. There is nothing in the evidence to show that any proceedings were started, or charged before the National Labor Relations Board, at the time this occurrence took place.

1036 Trial Examiner Dudley: The objection is overruled. There was a complaint filed in September of 1936.

Mr. Walsh: I move to strike out the question and answer.

Trial Examiner Dudley: Denied.

Q. (By Mr. Keele.) What was the treatment that you say you had received, that you say was such that it made this incident stick in your mind, and this date, and you thought it was the thing to do to remember it?

A. Well, when I was making \$6.50,—or, I will say \$6.00 per day around there, and they come in and cut me down to 50 cents per hour, after working there all your working days, why—

Q. Cut you down from \$6.00 to \$4.00; is that right?

A. I won't say—I worked piecework.

Q. Yes?

A. I was making \$6.00, \$6.50, \$6.70, and some days less; but they came in and cut me down to 50 cents per hour, and they told me I had a job there.

Q. Did you not know that you had a job before that?

A. Well—

Q. Was that news to you?

A. That 50 cents per hour was news to me, when they came in and told us, "You haven't got any ace in the hole anymore."

Q. What did they mean by saying that you did not have any ace in the hole anymore?

1037 A. I don't know what they did mean by that.

Q. Who said that to you, if you can recall?

A. One of the efficiency men.

Q. One of the officials?

A. One of the efficiency men.

Q. Oh, one of the efficiency men.

A. Yes, sir.

Q. When was it he said that to you?

A. I don't remember.

Q. What date was that exactly?

A. I don't remember the date.

Q. Well, was that not as important to you, as this statement of Mr. Anselm?

A. (No answer.)

Q. Yes or no.

A. Why, I don't know.

Q. But you cannot remember the date of that, can you?

A. No.

Q. All right. Now, what else was there; what other treatment did you get that was of such a nature that it made you feel that you ought to remember this conversation with Mr. Anselm?

A. I don't recall any other right now.

Q. You do not recall?

A. No.

1038 Q. All right. About what hour of the day was it that this conversation took place?

A. I don't recall that; there were so many times, quite a few different times, that we talked to Luther Henry, and this efficiency man.

Q. Well, you have got the dates, those dates in mind, have you not?

A. No, I haven't.

Q. The only date that you can remember, of any of your conversations, was September the 10th?

A. That is all.

Q. Is that correct?

A. Yes, sir.

Q. Was there anything particularly significant, or was there any particular reason why you could remember that date, and that date only, of all your conversations?

A. (No answer.)

Q. Can you answer the question?

A. What is the question?

Mr. Keele: Read it, please.

(The question was read.)

A. No.

Q. (By Mr. Keele.) Did you make a note of it?

A. No.

Q. You did not write it down anywhere?

1039 A. No.

Q. Did you talk with anyone about it?

A. No.

Q. About remembering the date?

A. No.

Q. At the time, I mean?

A. (No answer.)

Q. You talked to Mr. Walsh about it, did you not?

A. Yes.

Q. How did you fix that date when you were talking to Mr. Walsh about it?

A. I didn't fix any date.

Q. Well, did you give him the date?

A. Yes.

Q. When this conversation occurred?

A. Yes.

Q. Well then, how did you determine what date it was, at that time? Did he ask you whether you remembered that date, or whether you were sure of that date?

A. He asked me what date it was.

Q. Yes.

A. And I told him.

Q. Without any trouble, or any reference to any notes, or anything, you just remembered that it was September 10th, did you?

1040 A. Yes, sir.

Q. Now, you say you had a lot of other conversations with Luther Henry, and other officials?

A. No, I didn't say, with other officials.

Q. Well, who else was it, did you say?

A. I never had any conversation with anybody at all; it was always our group.

Q. And about what were those conversations, that you are referring to?

A. Well, just arguing over piece rates, and the standards they had there.

Q. Can you give us the dates of any of those conversations?

A. No.

Q. You can only remember the date of just this one conversation?

A. That is all.

Q. And you cannot remember what hour of the day it was?

A. No, I can't.

Q. Now, where did it take place?

A. Do you mean, now, the conversation that Mr. Anselm and I had?

Q. Yes.

A. That was shortly after dinner.

Q. Shortly after dinner.

A. Yes, sir.

1041 Q. Now, where did it take place?

A. Right in the cutting room.

Q. All right. Now, how many men were working there in the cutting room at the time?

A. 7.

Q. And you told him that there were 7 men there at the time—

A. Yes.

Q. —did you not?

A. Yes, sir.

Q. And where in the cutting room did the conversation take place? At the boss' desk, is that correct?

A. Yes.

Q. The foreman's desk?

A. Yes, sir.

Q. Chiswell.

A. Yes.

Q. Where was Chiswell?

A. I don't know.

Q. Was he not at his desk?

A. No.

Q. He was somewhere in the department there, was he not?

A. I don't know.

Q. You don't know that?

A. Chiswell was not in the department. I don't know where he was.

1042 Q. He was not in the department at all at the time, was he?

A. No.

Q. And how far were the other men from where you were, —the nearest man to this conversation?

A. The nearest man?

Q. Yes.

A. Oh, well, I should say from about here, to that man there. (Indicating.) That was the closest man.

Q. The closest man.

A. I judge that.

Q. Who was that?

A. (No answer.)

Q. Do you not remember?

A. No, I don't remember who it was.

Q. Why, you remember each man there, and just where his place was, do you not,—each man who worked there? Can you not tell us that?

A. No, I don't recall about that.

Q. You can recall that date, but you cannot recall who the man was who occupied the nearest work-bench?

A. I will say that it was Harold Dreyer who was running that closest machine.

Q. Are you sure of that?

A. I won't say that I am sure, no.

Q. All right. Who was the next man, the next closest  
1043 man, and how far away was he?

A. Ed Schuman.

Q. How far away was he?

A. Oh—

Q. About how far?

A. Oh, there isn't much difference in the first and second machines.

Q. About the same.

A. Yes.

Q. All right. And who was the next closest man to you, after those two men?

A. Harold Dreyer.

Q. Who?

A. Or rather, Clarence Dreyer.

Q. All right. And who else, then, in their order?

A. Ted Daluga.

Q. How far away was that man?

A. Well, he is down on the end—his machine was down on the end, I would say approximately—

Q. Between 20 and 30 feet?

A. 15 or 20 feet.

Q. 15 or 20 feet?

A. I would say that, approximately.

Q. All right. Now, was there a great deal of noise in the room, in the cutting room?



1044 A. Not so much; we can all understand each other.

Q. You can?

A. Without yelling.

Q. All right. Then, of course, whatever was being said to you could be heard; whatever was being said to you by Mr. Anselm could be heard by the other men, could it?

A. I don't know that.

Q. Well, in what tone of voice did he speak?

A. Well, he just spoke like—we were just talking like—

Q. Like you and I are?

A. Natural conversation.

Q. Like you and I are, do you mean?

A. Well, I don't know; I didn't holler at him.

Q. Did he talk to you standing up close, whispering in your ear?

A. No.

Q. Did he put his arm around your shoulder?

A. No.

Q. There was nothing confidential about it, then, in his manner, was there?

A. No.

Q. There was not attempt on his part, so far as you could see, to keep the other men from hearing what he was saying, was there?

A. (No answer.)

1045 Q. Was there?

A. I couldn't answer that question, because I don't know.

Q. Well, do you recall anything that he did, that made you feel or made you believe at the time that he did not want anyone else to hear it except you?

A. Well, he wouldn't call us all together; he didn't want to talk to the seven of us together.

Q. He said he was going to give you five minutes apiece, five minutes to each man?

A. He said he was going to give five minutes to each man, but he didn't.

Q. He did not give five minutes to each man?

A. No.

Q. How long did he give you, in his talk; about how much time did he give you?

A. Oh, I don't know. I never kept—

Q. Well, would you say two minutes?

A. Oh, something like that, or maybe—

Q. Five minutes?

A. About that.

Q. How?

A. Yes. I imagine it might have been about five minutes.

Q. All right. Now, how long did he talk to Dreyer?

A. I don't know.

Q. Well, you saw him call Dreyer there, did you not?

1046 A. Yes.

Q. And it was right in the department there?

A. Yes.

Q. You were only 15 or 20 feet away, while he talked to Dreyer, were you not?

A. Yes.

Q. And you do not recall whether he barely spoke to him, or whether he kept him there three or four or five minutes?

A. They had a conversation—

Q. Yes, but about how long; as long as he had talked with you?

A. Longer.

Q. Longer?

A. Yes, sir.

Q. It took him longer than five minutes?

A. Talking to Dreyer and Ted Daluga.

Q. Together?

A. Yes, sir.

Q. All right. Now, could you hear what they were saying?

A. No, sir.

Q. Did you try to?

A. No.

Q. How far away were you?

A. 15 or 20 feet.

Q. All right. Now, how close to them was the man  
1047 nearest you?

A. Well, I would say—that was Ed Schuman, and Clarence Dreyer—or rather, Harold Dreyer, and—

Q. How far away were they?

A. I told you before, about the distance from here to that man over there. (Indicating.)

Q. All right.

A. Maybe not quite that far.

Q. In other words, Mr. Anselm talked to Dreyer and Daluga at the same point in the shop where he talked to you, did he?

A. He talked to Harold Dreyer, and Harold called Ted

Daluga over there to verify some statement, but what it was I don't know.

Q. All right. Now, will you just tell us again what it was that Mr. Anselm said to you.

A. The whole story?

Q. Yes.

A. Well, he comes in there, and looked over at my machine, and said, "Come here, Earl."

Q. He called you by name?

A. Yes, sir.

Q. All right. He said, "Come here, Earl," and then what else did he say?

A. Well, he had that contract in his hand, and he asked me if I had read it, and I told him I had.

1048 Q. Now, what contract was that?

A. That was the C. I. O. contract, or the collective bargaining contract that the boys had drawn up, the way I understand it, and presented over to the office, and which was refused.

Q. When was it that they had presented it?

A. I don't know what date it was presented.

Q. You do not know what date it was presented?

A. No.

Q. You do not remember that date?

A. No.

Q. You knew that it was presented when it was presented, though, did you not?

A. Yes, sure, but the date I don't know.

Q. Well, as a matter of fact that had been presented a week before that, had it not?

A. I don't know.

Q. You do not know that?

A. No, sir.

Q. Did you know that it had been presented, that morning?

A. That morning?

Q. Yes.

A. I don't recall.

Q. You did not think that was important to you?

A. (No answer.)

1049 Q. Well, did you or did you not think that was important to you?

A. Yes.

Q. Did you not think that was as important to you, as this conversation you say you had with Anselm?

A. Yes.

Q. In fact that was the matter which was discussed with Anselm, was it not?

A. I guess so.

Q. But still you do not remember when that was presented?

A. No, I don't—not the date.

Q. All right. Now, what did he say about that contract?

A. He asked me if I had read it, and I said yes, that I read it over. He said, "I will give you even a better contract than that."

Q. Well, what did you say to that; that you did not care for it?

A. I didn't say I didn't care for it.

Q. Well, what did you say?

A. Well, we talked about the C. I. O. then.

Q. Well, did you say that you would be glad to have a better contract?

A. No, I didn't.

Q. Did you not want a better contract, if you could get it?

A. Oh, I imagine anybody would want something better, if they could get it.

Q. Did you tell him so?

A. No, I didn't.

Q. You just went right on to the C. I. O.

A. Sure.

Q. Who led up to the C. I. O.; Anselm, or you?

A. What is that?

Q. Who started the discussion about the C. I. O.; did you, or Anselm?

A. He told me he wanted to break the thing up.

Q. He told you he wanted to break the thing up?

A. Yes, sir.

Q. Well, just what did he say? As near as you can remember, what were his exact words, or as nearly his exact words as you can recall them?

A. "Oh," he said, "I want to break this thing up."

Q. What did he mean by "this thing"?

A. The union.

Q. How do you know he meant the union?

A. Because I showed him my union card.

Q. What made you do that?

A. Well, he told me—or rather I told him that if I quit, or anything like that, I would be blackballed, if the union went through; and I wouldn't be a traitor, or anything like that.

1051 Q. You said you would be blackballed?

A. Yes.

Q. By whom?

A. Well—

Q. What?

A. By the whole world, I suppose.

Q. Oh, I see. Have you got the impression that the whole world belongs to the C. I. O.; is that it?

A. No, I haven't got that impression.

Q. Well now, you say that you pulled out your card.

A. Yes.

Q. To show Anselm that you were a member?

A. Yes, sir.

Q. Had he started talking about the C. I. O. at that time?

A. Yes, sir.

Q. He had?

A. Yes, sir, he told me that in a couple of years time, it would be forgotten, and it would never hurt me if I quit it.

Q. How did he know that you were a member?

A. Why—

Q. Did he say how he knew you were a member?

A. He didn't say how he knew it, no, sir.

Q. Well, did he say to you that he knew you were a member?

A. No. He didn't say that. He knew I was after I showed him my card.

1052 Q. Oh, but he had gone on and talked about your withdrawing from the C. I. O. before that time, had he not?

A. (No answer.)

Q. What?

A. Yes, sir.

Q. And you had said nothing about being a member at that time, had you?

A. No.

Q. You were not an officer in the lodge, were you—

A. No.

Q. Lodge 66?

A. No.

Q. Did he say why he singled you out?

A. No, he didn't.

Q. Did you ask him?

A. No.

Q. Well, you said to him, "Wait a minute: I am only one of seven," did you not?

A. Yes.

Q. Did you say to him, "Why do you come to me?"

A. No, I didn't. I just told him that we had no—that I was just one of seven men, that I wasn't an officer, and no boss or nothing over it.

Q. Were there only seven men in the C. I. O.?

A. There were seven men in my department.

1053 Q. And they were all members of the C. I. O., were they?

A. Yes, sir.

Q. Well, there were a lot more members than that, of the C. I. O., in Lodge 66 at that time, were there not?

A. Yes, sir.

Q. Well, what did he say then; that he wanted to break it up?

A. Yes, sir.

Q. And in two years there would not be anything to it?

A. He said that in a couple of years time it would be all forgotten.

Q. And then you said what to him?

A. I said, "Now, you go ahead and call the whole gang up here." That is just what I said.

Q. Then what did he say?

A. Well, he said that he had something to do over in the office, and that he had lost a lot of time already, and he couldn't afford to waste any more, and he would give us five minutes apiece, give the rest of the boys five minutes apiece.

Q. And that he would sooner do that, rather than give five minutes to the whole seven at one time?

A. I don't know.

Q. Is that what he meant?

A. I don't know.

Q. Well, you suggested that he talk with you all at  
1054 one time, did you not?

A. Yes, sir. I didn't want to be singled out.

Q. But he said that he had wasted a lot of time already that morning?

A. Yes.

Q. So he would give you five minutes apiece?

A. That is what he said.

Q. That would make 35 minutes, would it not?

A. (No answer.)

Q. Did he tell you what he had been wasting time on that morning?



A. No.

Q. All right. Now, what other conversation was there?

A. That is all. Then I went and sat down, and went to work.

Q. Did he tell you, "All right; go back to work"?

A. No, sir, he didn't tell me anything. I just walked back myself.

Q. You just walked away and left?

A. No; after he called Clarence Dreyer up there, I walked back to the machine.

Q. Did he tell you to stay there while he talked to Dreyer?

A. No.

Q. Did he tell you to go along about your business?

A. No, sir.

Q. Well, what was the signal, or what caused you  
1055 to move away?

A. I just moved away.

Q. And you did not pay any attention to what was going on?

A. He said he was going to give each of the men five minutes apiece, and five minutes for each man meant that I didn't figure I should have my nose stuck in there.

Q. So that when he called Dreyer up there, you moved away?

A. Certainly.

Q. Did you talk to Dreyer about this afterward, after you saw him talk with Anselm?

A. Yes, we talked together.

Q. Where did that take place?

A. Well, that I don't know.

Q. Did you ever have any further conversation with Mr. Anselm about this matter of the C. I. C.?

Mr. Walsh: I thought we had agreed not to go into matters of that kind.

Mr. Keele: Well, that is true, but I just want to tie it up; I think it ties in with this other point.

Mr. Walsh: All right.

Mr. Keele: I am not going to pursue it at any length. Will you answer the question?

A. What is the question?

Mr. Keele: Read it.

(The question was read.)

1056 A. No, I don't think I had, that I can remember.

Q. (By Mr. Keele.) You never discussed it with him again?

- A. I don't think so.
- Q. And you never discussed it with him before either, did you?
- A. No, sir.
- Q. When did you discuss with Dreyer your conversation, that you had with Anselm?
- A. Oh, I don't know. We talked—
- Q. On that day?
- A. Oh, I imagine that there was a few words said in the room after that, yes.
- Q. Well, do you recall what that conversation was?
- A. No, I don't.
- Q. Well, was there not some discussion among the men there as to Mr. Anselm's visit to that department, and his conversation with you, and his conversation with Dreyer, and his conversation with Daluga? Was there not some conversation about that later on in the day among the men?
- A. I imagine that there was some talk back and forth, a few words now and then.
- Q. Well—
- A. But I don't remember.
- Q. Did not Dreyer ask you what he had said to you—what Anselm had said to you?
- 1057 A. Sure.
- Q. Did you tell him?
- A. Yes, I told him.
- Q. Which one of the Dreyer's was that?
- A. I told Clarence and Harold both.
- Q. I see. Were they both in your department?
- A. Yes, sir.
- Q. And they told you what Anselm had said to them, did they?
- A. Some of it, but I forget.
- Q. What did they tell you that Anselm had said—
- A. I don't know.
- Q. Just a moment. What did they tell you that Anselm had said to them?
- A. (No answer.)
- Q. Can you answer the question?
- A. I don't recall just what it was.
- Q. You cannot recall that?
- A. No.
- Q. You continued to work for the company after that conversation, did you not?

A. Yes.

Q. On up until February the 17th?

A. Yes—I didn't work on the 17th.

Q. Well, up until that time. You were at work on the 16th of February, were you?

1058 A. Yes, sir.

Q. You were not discharged up until that time, from the 10th of September to the 16th of February, were you?

A. (No answer.)

Q. You were not discharged, I say.

A. No.

Q. All right. And no threats were made to you, that you would be discharged because of your union membership, were there?

A. Not to me.

Q. No. And there were not to anybody else there either, that you know of, were there?

A. I don't know.

Q. You did not hear of any, did you?

A. No.

Q. And you were not discharged on the 16th, were you?

A. No.

Mr. Keele: That is all.

Trial Examiner Dudley: Is that all?

Mr. Keele: That is all of the cross examination, Mr. Walsh.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Clarence Dreyer. This witness has al-  
1059 ready been sworn, your Honor.

CLARENCE DREYER, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Mr. Dreyer, I will ask you whether you had a talk with Mr. Anselm in the cutting department about September 10th, 1936?

A. Yes, sir.

Q. Will you relate what that conversation was, between yourself and Mr. Anselm at that time and place?

A. Well—

Q. Just tell it in your own words.

A. Well, Mr. Anselm came over in the department that afternoon, right after dinner; and I remember his calling Mr. Fagan over there to talk to him; and then—

Q. Did you hear what he and Mr. Fagan had to say?

A. No, I couldn't hear what was said. That was a private conversation.

Q. Was there too much noise?

A. There is enough noise in there so that if you want to hear, you have got to talk up.

Q. Go ahead.

A. Then after he talked to Mr. Fagan, he called Ted Daluga up there, to talk to him. I was in on that conversation, but Daluga was there first; he called him first

Q. Yes?

A. What they said—what they had to say, I don't know, but during the course of their discussion, why, Ted Daluga called me up there to verify something that had been said.

Q. Do you recall what it was?

A. The discussion at that time was whether he could drop his union membership, and sign some kind of petition that Mr. Anselm said he had. I just don't recall what the petition was, but I imagine it was on this plan that they had sent us through the foreman. The discussion was about signing that petition, and Mr. Daluga told him that he couldn't do it; that he had already took the oath of membership in the union, and he couldn't belong to any company union; part of his oath was that he couldn't belong to any company union; and he called me up there to verify that statement. Well, we talked to Mr. Anselm about that, and we said we couldn't do that, and he couldn't see why, and we tried to explain to him in the best way we could.

Then he said, well, he wasn't going to bother talking to any of the rest of the boys; that he would be back later with the petition. We told him that if he could get a majority of the employees' names on that petition, we would sign along with them; that we would do what the majority done; and he said, well, he wouldn't bother talking to any of the rest of the fellows, but he would be back later in the day with the petition.

That is all that I remember, that was said; and he didn't come back no more with any petition.

Q. That petition related to what?

A. Well, it was—as near as I can understand it, it was a petition to agree to sign up with this agreement that the company had sent over that day, supposed to be drawn up from the employees representation plan, the typewritten copy that we received through our foreman in an inter-office correspondence envelope.

Q. I hand you what has been marked Board's Exhibit No. 15, and ask you if that is what you have reference to, when you refer to a typewritten memorandum that came in an inter-office communication envelope?

A. Yes, sir, this is the one.

Q. And that is the plan of employee representation, is that right?

A. Yes, sir.

Q. All right. Did he say anything about your union?

A. Well, the only thing that was said about our union was, withdrawing from it, and signing this petition that he had. That is the only discussion. That is where I came in, on the discussion he was having with Mr. Daluga.

Mr. Walsh: You may inquire.

1062

*Cross-Examination.*

Q. (By Mr. Keele.) Mr. Dreyer, you say you saw that petition that was handed to you?

A. Yes, sir.

Mr. Keele: Is that here?

Mr. Walsh: That is the plan they received.

Mr. Keele: How?

Mr. Walsh: That is the plan they received.

Q. (By Mr. Keele.) You say you saw this plan—

A. Yes.

Mr. Keele: Exhibit—

Mr. Walsh: 15.

Mr. Keele: 15?

Mr. Walsh: Yes.

Q. (By Mr. Keele.) You say you saw this plan that day; is that right?

A. No, sir, I didn't say I seen it that day. I said that the discussion was about that plan that we had received from our foreman.

Q. And you had already received this plan from your foreman at the time of this discussion that you have been talking about; is that correct?

A. Not this one, no, but we seen—this is the one he was talking about, when he had that petition; but we had that understanding, because I was in the office when we 1063 took—when he offered us a copy of that Wire Mill plan that they had.

Q. Well now, let us get this straight, Mr. Dreyer. Did I not just understand you to say that you had then received a copy of this employees representation plan from your foreman in an inter-office communication envelope?

A. We had.

Q. All right.

A. That is right.

Q. And that had happened at the time of this conference?

A. I don't know just exactly the date that we got that, but—

Q. Before, or after?

A. It was just about the time we got that, through the office.

Q. All right, but was it before or after you received this plan from your foreman, that this conversation took place?

A. Before or after?

Q. Yes.

A. I don't remember.

Q. Well, you had already received it at the time you had your conversation, had you not?

A. I don't remember if all of us had received it or not.

Q. Well—

A. (Continuing.) I received one in the office, when I was up there on that committee.

1064 Q. Yes. All right. Now, at the time when Anselm was talking with Daluga, and yourself, and also with Fagan, did he talk with them about the contents of that employees representation plan?

A. I don't know what he talked to them about.

Q. What is the answer?

A. I say I don't know what he talked to them about.

Q. You do not know what he was talking with them about?

A. I don't know what he said to Mr. Fagan, or to Mr. Daluga.

Q. Fagan told you later, did he not?

A. I don't remember. All I know is what I heard when I come in on that discussion.

Q. Well now, wait a moment. Let us get this straight.



What did you hear when you came in on the discussion between Daluga and Anselm?

A. The discussion, at the time when I come into it, was as to whether Daluga could withdraw from his union membership, and sign that petition.

Q. What did the petition say?

A. The petition didn't say nothing; it didn't have nothing on it yet.

Q. All right.

A. No names, that is.

Q. Well, what was the petition for?

A. About signing up into a plan that Mr. Anselm 1065 had mentioned to us. -

Q. An employees representation plan?

A. Something on the order of the Wire Mill plan; and he said he could make it even better; he said it would be practically the same as the Employees Plan from the wire mill; but it would be practically on the same order.

Q. And had the employees received copies of that plan at that time?

A. They had seen the ones that we brought from the office in book form.

Q. There were two of those, were there not?

A. No—

Q. Just two copies?

A. No, sir, there were more than two.

Q. All right. How many copies were there?

A. I don't remember how many there were, but there was more than two.

Q. Well, how many? If you know that there were more than two, how many were there?

A. Well, each member of the committee that went to the office, received one, and some of them got two, and maybe some of them three copies.

Q. As a matter of fact, they asked for them, and some of them asked for three or four, did they not?

A. Who?

1066 Q. The members of the committee, when they went to the office that morning?

A. No.

Q. They did not ask for any?

A. Not that I recall.

Q. They were just handed to them?

A. Yes, sir.

Q. And they took them, and just went right on out; is that right?

A. Yes, sir. Somebody brought them in, and gave them to Anselm while we were having that meeting; about the middle of the meeting somebody brought them into the office, and Mr. Anselm gave them to us before we left.

Q. And they brought in what, 15 or 20 copies, would you say?

A. No, sir, I wouldn't say that there was that many.

Q. Well, 10? You said some of them had two.

A. I can't say exactly how many there was, but I know that there was more than what there was on the committee.

Q. Did you and the members of the committee distribute those?

A. We took them—Mr. Anselm told us to take them around to the employees, and see what they thought of it, and naturally anybody who had a chance, read up on it.

Q. I see. All right. Now, when was this conversation with Mr. Anselm, and yourself, and Daluga?

1067 A. I am sure that it was right after dinner, shortly after dinner, and I am pretty sure it was on the 10th, I wouldn't say for sure, though, but as near as I can recall it was on the 10th.

Q. The afternoon of the same day that you had been in the office?

A. Yes.

Q. And—

A. (Continuing.) I am not sure of the date, but as near as I can recall, it was the 10th.

Q. And each of the committee members had received one or more copies of the employee representation plan?

A. Yes.

Q. And then that very day Mr. Anselm had come around with a petition to the men in the factory, asking them to sign up, and join up in an employee representation plan—on the same day; is that correct?

A. He never mentioned this employee representation plan. He had a petition there, to sign up.

Q. The petition—

A. (Continuing.) And there was no other thing that he would sign up—or that he would want us to sign a petition for, unless it was the plan that he had offered us while we were in the office.

Q. The petition was typewritten, was it not?

1068 A. Well—

Q. Except for the places to sign?

A. There was something on the top of it; as near as I recall, there was something on the top, but I don't know what it was.

Q. What did it say?

A. I don't know; I didn't read it.

Q. You do not know then what the purpose of that petition was, do you?

A. Well—

Q. You are only saying what it must have been?

A. I know, because he asked us if—he asked Mr. Daluga why he couldn't withdraw from his union membership and sign that petition. Well, what would that mean?

Q. I do not know. That is what I want to know. Do you know what it meant?

A. There is only one thing that it could mean.

Q. Do you know what it meant?

A. Yes.

Q. Other than what you think it could mean?

A. Yes, I do, because I had been in the office that morning, and heard his offer.

Q. And you are basing your statement that that is what it meant, on the fact that you worked in the office, and heard him suggest the employees representation plan?

A. Yes.

1069 Q. And that is all that you know as to that petition, what it contained, and what it was for; is that correct?

A. That is all.

Q. Did you not talk considerably about that petition?

A. No, sir, because he didn't call me over there for a discussion.

Q. How did you happen to go over there?

A. Daluga called me over.

Q. Daluga called you over?

A. To verify something that he had said.

Q. What was it that he wanted you to verify—by the way, what does "verify" mean?

A. Well, to substantiate whatever he said.

Q. All right.

A. To prove it.

Q. What was it Daluga said—

A. He asked me—

Q. (Continuing) —that he called you over to substantiate, or verify?

A. He asked me if he wasn't right, that when he joined the union, he took an oath that he could not belong to any company union, or any other plan of that sort.

Q. And you said that was so, did you?

A. That is the substance of the discussion, as near as I can recall it now.

1070 Q. You did not hear anything that went on between Fagan and Anselm, did you?

A. No.

Q. Just before that?

A. No.

Q. But you did see them talking?

A. I did.

Q. How long did they stand there and talk?

A. Oh, I imagine four or five minutes.

Q. And how long did Daluga and Anselm talk?

A. Well, Daluga was talking to him I should say four, five or six minutes before they called me up there,—before Daluga called me up there.

Q. Did Anselm ask you to withdraw from the union?

A. He didn't ask me to withdraw from the union, no, sir.

Q. All right. Now, you were not discharged from the date of this conversation, that you fix as the 10th of September, until the 17th of February, 1937, were you?

A. No.

Q. There were no threats of discharge made against you, were there?

A. No, sir.

Q. Nor did you hear of any threats of discharge being made against anyone else, did you?

A. I never heard of no threats made to anyone else.

1071 Q. And you did not hear anyone tell you that they had been threatened, did you?

A. Not that I recall.

Q. (Continuing) With discharge—how?

A. Not that I recall.

Q. And you revealed the fact, and that fact was known to Mr. Anselm, that you were a member of the union; is that correct?

A. Naturally.

Q. And Daluga told him that he was a member of the union, did he not?

A. I don't know; I didn't hear him.

Q. Well, did he not say to him that when he joined the union, he could not join any other union because of the oath which he took? Did you not just say that?

A. The discussion was about withdrawing from the union, yes, sir.

Q. And did not Daluga call you over there to verify or substantiate the fact that he had taken an oath that he could not belong to any other company union; is that not correct?

A. That is right.

Q. Then he did tell Anselm, did he not?

A. He probably did.

Q. Well, he said that, did he not?

A. (No answer.)

1072 Q. He said that, did he not?

A. You asked me if Mr. Daluga told Mr. Anselm that he belonged to the union, and I told you I didn't hear him say that.

Q. Well, did he reveal the fact; did he say anything to indicate to Anselm that he did belong to the union?

A. Why, sure; Mr. Anselm knew that he belonged to the union.

Q. And Daluga continued to work there, did he not?

A. Yes, sir.

Q. Until February the 17th?

A. He did.

Q. All right. Now, when Mr. Fagan was testifying, you were standing at the door here, were you not?

A. Yes, sir.

Q. And you heard what he said?

A. Yes.

Q. You have got an interest in the outcome of this case, have you not?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: I will recall Mr. Kondrath. This witness has been sworn before, your Honor.

JOHN A. KONDRATH, recalled as a witness for the  
1073 National Labor Relations Board, being previously  
duly sworn, testified further as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Mr. Kondrath, your normal duties when you worked at Fansteel, were in the tool room, were they not,—or the machine shop?

A. Well, it was called the tool room.

Q. The tool room.

A. Yes, sir.

Q. Now, about the first part of November was there any change in the place where you were working?

A. Yes.

Q. Will you tell the Examiner all about what that change was, and how long it lasted?

A. Well, as near as I can recall it, it was on Armistice Day in November.

Q. 1936?

A. Of 1936, yes, sir—that a telephone call had been received by my foreman, John Welch; and Mr. Anselm was supposed to have called and said that I was to gather my tools and one thing and another, and take them over to the office immediately after twelve-thirty, or after lunch.

Q. The office is located outside of the plant fence, is it not?

A. Yes, sir, it is located outside of the plant fence.

1074 Q. All right. Now, what happened, when you got over to the office?

A. Well, I gathered my tools, and went over to the office, and met Mr. Anselm, and went on into the office, and he says, "I think that you and I are going to get along pretty good here, John. I am to give you your work, and I am to inspect your work." "But", he says, "I am going to ask you to promise me one thing." I says, "What is that?" "Well," he says, "you are to work over here from eight o'clock until four o'clock, and during the noon hour you can go and eat your dinner any place you want to, except visiting inside of the plant." And at that time he called his secretary, I believe that is Mr. Schultz, to be a witness, that I promised Mr. Anselm that I will not go and visit inside the fence, or in the buildings, while I am in the office.



Then after that promise had been made, and witnessed by Schultz, he took me over to my place, where there was a lathe, and a drill press, and told me, "This is the place where you are going to work." And he says, "If there is no work, why, sit down." So some magazines were brought in for me to read at such times when there was nothing to be done; so I read magazines, and when there was a job, I done the job.

Then about a few days later, there was a general increase in the shop of 5 cents per person.

1075 Q. Per hour?

A. Per hour.

Q. Yes?

A. And I didn't know anything about it until I went home and I read it in the paper. Then it was a little later—at a later time, other things had happened, during the flood, and they took up some collections from the fellows in the shop; and somebody, I don't know who, had written some letter to Mr. Anselm, that the management was not doing so well donating; so all of a sudden that noon I am called in, just a few minutes before noon, into the office, to talk with Mr. Anselm. Mr. Anselm hands me the letter, and I read it; and then he says, "What do you think of it?" "Well" I says, "I don't know, what to think of it. I couldn't prove who sent the letter." And he says, "Well, you are the president of the lodge." I says, "Yes, I am president of the lodge. But" I says, "when I am in the office here, I don't get into contact with them; I don't get into contact with all of the members, so I really don't know what is going on in the factory." "Well" he says, "did you give these men permission to make collections on the premises?" I says, "I did not. In fact, I didn't know anything about it." "Well" he says, "You know, John, our president is Cleveland, and we have to send a telegram to him, to ask his permission whether we can make any donations." And he says, "We are not too  
1076 late with it." "Well" I says, "I really don't know anything about it." I says, "I am not the same kind of president as Mr. Aitchison is, and we have got a committee in the shop that is functioning without me, and they have more power than I have."

Well, Mr. Aitchison didn't know that that was the fact, that they was working in the shop while I was in the office; and the vice president was there; he was taking my place, as far as I was concerned.

Now, in this discussion Mr. Anselm wanted to know if I knew who wrote that letter, but naturally—

Mr. Swiren: Will the witness speak a little louder, please.

A. I say, Mr. Anselm wanted to know if I knew who wrote that letter, but anybody could have written that letter.

Q. (By Mr. Walsh.) Was the letter from anybody in the lodge, do you know?

A. That I don't know. I don't know who wrote the letter, and I never did hear afterward about it. Then Mr. Anselm says, "Well, I don't know, John", he says, and then we went on talking about the Wagner Act; and Mr. Anselm asked me if I thought that the Supreme Court will rule on this thing; and I told Mr. Anselm that every indication shows that there is a possible chance for the bill to be passed; and I offered Mr. Anselm to meet with the same committee; and

I offered him, "If we can't meet here" I says, "we will meet on the outside, in the Slovenik Hall, or any other place." "Well" he says, "there is no use in doing that. We can meet here in the office at any time." But they didn't feel enthusiastic about meeting in the office, after denying the recognition of the Amalgamated Association of Iron, Steel and Tin Workers,—an outside affiliation, as they called it.

Then after this discussion I was told to go back and eat my lunch, and at that time it was during the noon hour, so I went back and ate my lunch.

Q. Now, how long did you continue working in the office?

A. Well—

Q. On the lathe, or the machinery there?

A. I stayed there a few months, but after Mr. Anselm had found out that I didn't know anything about what was going on in the plant, due to the fact that I wasn't getting any bulletin, he called Mr. Schultz in and asked him, "What is the matter, Bill? You are not giving John any bulletins here. Did you run out copies, or something?" And Schultz says, well he has just merely forgotten about it: he didn't think of it.

Q. When were you sent back to the shop?

A. I really don't remember the date, but it was a few weeks before this strike, or protest.

Q. Then that would put it in the latter part of January, or the first part of February; is that right?

A. I believe it was the last part of January, but I really don't remember the date, what date it was on.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele.) Now, when you went from the tool room to Howard Phillips' laboratory, when was that?

A. That was on Armistice Day.

Q. On Armistice Day.

A. Yes, sir.

Q. November 11th—

A. Yes.

Q. —1936.

A. Yes.

Q. Now, what were you receiving in the tool room in the way of wages?

A. Well, at that time I was receiving 63 cents per hour.

Q. 63 cents per hour.

A. Yes, sir.

Q. For how many hours per day?

A. Why, as many as I worked.

Q. Well, what was the usual working day?

A. Eight hours.

Q. All right. And you put in eight and a half hours in the factory, in the tool room, did you not, to get your eight hours pay?

A. Yes.

1079 Q. I mean, you had a half an hour off for lunch, for which you received no pay?

A. That is right.

Q. Now, on the new job that you got, you received the same rate of pay, did you not?

A. That is right.

Q. But they paid you for the lunch hour, did they not?

A. Yes.

Q. So that you only had to put in eight hours in order to get the same amount of pay; is that right?

A. Yes, sir.

Q. Or in other words there was a difference between the jobs, and you had to put in half an hour less time in the new job than you did on the other, to get the same pay?

A. Yes.

Q. All right. And also, you say they let you read magazines on the new job.

A. Yes.

Q. When you did not have to work.

A. That is right.

Q. So that was a better job, was it not?

A. Very much better, yes, sir, only I wasn't free.

Q. You were not free?

A. No.

Q. Free to do what?

1080 A. Well, I couldn't go and talk to anybody outside, in any of the buildings.

Q. Had you been going around talking to people, when you were in the tool room, on the company's time?

A. Well now—

Q. Yes or no.

1081 A. No, I can't answer that "yes" or "No."

Q. Answer the question.

Mr. Walsh: I object. I want to say—

Mr. Keele: Just a moment. I want an answer to my question. I think it is a proper question, as to whether or not he has been going around on the company time, talking to people during working hours.

Mr. Walsh: About what?

Mr. Keele: I do not care.

Trial Examiner Dudley: The objection is overruled. The witness may answer the question.

Mr. Keele: Answer the question.

A. What is the question?

Mr. Keele: Read it to him.

(The question was read.)

Mr. Walsh: Now, if the examiner please, I think there ought to be some subject stated, for that discussion.

The Witness: I don't go around and talk to people—

Mr. Walsh: Just a moment.

Mr. Keele: He has answered the question. He said he did not.

The Witness: I didn't answer no question.

Mr. Walsh: What was the answer?

Mr. Keele: He said he did not, that he did not go around and talk to them.

1082 Q. (By Mr. Keele.) Then why do you say that you were not free, that you could not talk to anybody when you were in the laboratory?

A. Now, wait a minute. I meant, when I said I wasn't free, that I wasn't allowed, like the rest of the working men in the shop.

Q. To do what?

A. Well, now, for instance, if I needed a tool, I had to

ask Mr. Schultz to go over and get it for me, or if I wanted a wiping rag or something, I couldn't go in there and get it for myself, but I had to ask for service.

Q. Oh. You had a flunky assigned to you, in other words?

A. Yes, sir.

Q. I see. You had gotten important enough by this time so that you had a man who ran your errands for you?

A. Absolutely.

Q. So you think, do you, that the officials of the company—the president of the company, for instance, who has somebody to do things for him, is not as free as a man in the shop; is that your idea?

A. In their own activities, they are.

Q. But from your point of view they are not?

A. Well, they are, but I was not.

Q. Well, did they make you do anything in there that you did not want to do?

1083 A. Well, that didn't make any difference, whether they made me do anything or not—

Q. Well, did they?

A. No.

Q. No?

A. No.

Q. You did not have to work as long, and you were free to read magazines?

A. Yes.

Q. You had a man to run errands for you?

A. Yes.

Q. All right. But still you were worse off than you were when you were in the factory, were you?

A. Well, to the extent of the fact that I was there all alone, yes.

Q. I see. In other words, if the nature of your work requires you to be all alone, and the nature of the other work that you had required you to be with other men, you figure that you are worse off, if you are on the job all alone?

A. Yes, sir.

Q. Simonson was in there, was he not?

A. No. He came there a few weeks later, and he was there once in awhile. He wasn't there all the time.

Q. Howard Phillips was there, was he not?

A. No, not all the time. Sometimes you couldn't find  
1084 Howard for days, in the shop, if they called him on the telephone or something.

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Q. Do you know where he was during that time?

A. No.

Q. Well, your chief objection to that job was that you were lonesome, is that right?

A. Yes.

Q. I see. All right. Now, you had had another job besides that in the tool room, and you worked there preceding the time you went over to the main office; that is correct, is it not?

A. Yes.

Q. You had a job on the vacuum pumps?

A. Yes.

Q. How long did you work on that job?

A. Oh, about a year and a half, or two years or so.

Q. That long?

A. Yes, sir.

Q. You had some trouble with Dr. Balke in connection with that job, did you not?

A. Not that I recall.

Q. Well, Dr. Balke did not think that you were capable of handling the job, did he?

A. Well, I wouldn't say that.

Q. You would put it a different way?

A. Yes.

1085 Q. But it means the same thing; is that right?

A. No.

Q. Well, at any rate, there was some little misunderstanding about it, was there not?

A. Well, not between Balke and I.

Q. Well,—

A. I don't recall of having any misunderstanding with Balke.

Q. Well, was it Raichel?

A. No, not with Raichel, either.

Q. No.

A. No, sir.

Q. You did not have any difficulty on that job at all, then?

A. No.

Q. Why were you taken off of it?

A. That I don't know. Luther Henry claimed I put a gauge on backward.

Q. Oh.

A. (Continuing.) But I don't see how anybody who works



on the vacuum could put a gauge on backward on the vacuum, if he knew anything about it.

Q. Luther Henry was assistant plant superintendent, was he not?

A. I don't know.

Q. How?

A. He was superintendent at times, and then he was 1086 assistant superintendent—yes.

Mr. Keele: All right.

A. But I don't know.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: May we have a short recess at this time, Mr. Examiner, please?

Trial Examiner Dudley: I will declare a recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: Let the record show that the hearing is reconvened, following recess.

Mr. Walsh: George Smith.

Trial Examiner Dudley: Is this a new phase, Mr. Walsh?

Mr. Walsh: Pardon me?

Trial Examiner Dudley: Is this a new phase, that you are going into now?

Mr. Walsh: Yes. This witness has not been sworn, if the examiner please.

GEORGE WILLIAM SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

1087 Mr. Collins: Mr. Smith, were you subpoenaed to appear here at this hearing this morning?

The Witness: Yes, sir; I was.

Mr. Collins: If the examiner please, I would like to claim privilege on behalf of Mr. Smith under section 7, paragraph 3—or, rather, section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: As representing Mr. Smith?

Mr. Collins: I am claiming privilege on behalf of Mr. Smith.

Trial Examiner Dudley: The privilege is so granted.

Mr. Collins: All right.

Q. (By Mr. Walsh.) Will you state your full name, please, Mr. Smith?

A. George William Smith.

Q. Where do you live?

A. Waukegan, Illinois.

Q. You worked at the Fansteel Metallurgical Company, did you?

A. Yes, sir.

Q. When were you first employed there?

A. In October, I believe, of 1933.

Q. What was your job?

A. Plater and deplater.

Q. After the men were evicted from the plant, and the plant reopened, did you return to work?

1088 A. No, sir; I did not.

Q. I will ask you if anybody connected with the company asked you to come back to work.

A. Yes, sir; they did.

Q. Will you just tell the examiner about that; just tell him in your own words?

A. Well, about the first part of March, around the first part of March, I went in for my check, and Luther Henry was in the office and he asked me if I wanted to sign an application for a job. I said, "No, not until the rest of the fellows go back."

Mr. Swiren: Speak a little louder, please.

The Witness: I said I didn't want to sign an application for work, and I didn't want to go back until the rest of the fellows went back to work.

Q. (By Mr. Walsh.) If all of the other men were taken back, would you have gone back to work?

Mr. Swiren: Just a moment. That is objected to.

A. Yes, I would.

Mr. Swiren: Just a moment. When there is an objection, Mr. Witness, do not answer until the examiner has had an opportunity to rule.

I do not see how that has any materiality to the issues here. We ought not to have the benefit only of the speculation of this witness as to what he might have done. We ought to have the facts only, as to what did happen.

1089 Trial Examiner Dudley: I will overrule the objection, and admit it for what bearing it may have on the situation, and on his interpretation of the conversations. These conversations apparently are a bit vague, judging from previous testimony that we have had from at least one of the employees.

Mr. Swiren: Well, that does not—

Trial Examiner Dudley (Continuing): But this testimony may help explain it.

Mr. Swiren: Vagueness of conversations, or of testimony, does not justify speculation as to what this witness might have done if conditions that did not occur might have occurred.

Trial Examiner Dudley: The objection is overruled, nevertheless, and the testimony will be admitted.

The Witness: What is the question?

Mr. Walsh: Will you read the question to the witness, please, Mr. Reporter?

(The question was read.)

The Witness: I answered that.

Trial Examiner Dudley: What was the answer?

(The answer was read.)

Q. (By Mr. Walsh.) Did you have any conversations with anyone else connected with the company about coming back to work?

A. Yes, sir; with Florian Schardt.

Q. What is Mr. Schardt's position with the company?

A. Foreman in the wire department.

1090 Q. By the way, Mr. Henry is assistant superintendent, is he not?

A. Yes, sir.

Q. What did Mr. Schardt say to you, and what did you say to him?

A. Mr. Schardt asked me—

Mr. Swiren: May the witness talk a little louder?

Trial Examiner Dudley: Speak a little louder. They all want to hear you.

A. Mr. Schardt asked me if I wanted to go back to work, and I said, "Yes, when the other men go back, I will go back, too."

Q. (By Mr. Walsh.) And what did he say to that?

A. That was all that he said.

Mr. Walsh: You may inquire.

Mr. Keele: What was that last answer?

(The question and answer were read.)

Mr. Keele: No cross.

Mr. Walsh: You may step down.

Trial Examiner Dudley: Just a moment.

Q. (By Trial Examiner Dudley.) May I ask you, Mr. Smith, when and where Mr. Schardt and yourself carried on this conversation, to which you have just referred?

A. In the office of Fansteel.

Q. About when?

A. Well, now, that was about the 5th of March, when 1091 I went down after my last pay check.

Trial Examiner Dudley: That is all. Witness excused.

(Witness excused.)

Mr. Walsh: Roy Brown. This witness has not been sworn, Your Honor.

Trial Examiner Dudley: You have not been sworn?

Mr. Brown. No.

ROY BROWN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your full name is Roy Brown, is it?

The Witness: Yes, sir.

Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like on behalf of Mr. Brown to claim his exemption under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: His privilege?

Mr. Collins: His privilege.

Trial Examiner Dudley: Granted.

*Direct Examination.*

Q. (By Mr. Walsh.) State your address.

A. 712 North Lewis Avenue, Waukegan, Illinois.

Q. You were employed by the Fansteel Metallurgical Corporation, were you?

1092 A. Yes, sir.

Q. When were you first employed there?

A. I went to work there first in 1924, and I worked until 1929, and then I was off until 1933, and then I worked up until February 17th, 1937.

Q. Sometime after February 26th, 1937, did you have any talk with anybody at the company about going back to work?

A. Well, I had a conversation over the telephone.

Q. With whom?

A. With my foreman, Florian Schardt.

Q. And what did Mr. Schardt say to you, and what did you say to him?

A. Well, he called up one night, and he asked me—he says—I was on the picket line that day, and he asked me, he says, “Did you want to talk with me tonight?”, and I told him, “No.” And he says, “Well, I thought from the way you looked, you might have wanted to speak to me.” And I says, “No.” “Well,” he says, “do you want to come back to work?” And I says, “If you will take the whole bunch back, when we all can go back, why, then I will go back.”

And he says, “Well,” he says, “if you ever change your mind”, he says, “give me a ring, will you?” And I says, “Yes, and thank you for calling.” And that was all.

Q. Did you—

Mr. Swiren: Just a moment. What was the latter 1093 part of that answer?

(The answer was read.)

Q. (By Mr. Walsh.) Did you have any conversation with anybody else about that?

A. No, that was the only time.

Mr. Walsh: You may inquire.

Mr. Keele: No cross-examination.

Trial Examiner Dudley: Just a moment.

Q. (By Trial Examiner Dudley.) You were at your home, were you, Mr. Brown, when he called you?

A. Yes, sir; I was.

Q. What time of the night was it?

A. Well, it was around about 9 o'clock at night.

Mr. Keele: Just a moment, if the examiner please. There are one or two questions, if I may.

Trial Examiner Dudley: Yes.

*Cross-Examination.*

Q. (By Mr. Keele.) When did this call occur? When did you receive this call?

A. It was about the middle of March.

Q. Mr. Brown, were you one of the men in the buildings, either 3 or 5, of the Fansteel Company's plant?

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A. Yes.

Q. (Continuing) Between February 17th and February 26th?

A. Yes, sir.

1094 Q. You were a member of Lodge 66?

A. Yes, sir.

Q. You still are a member of Lodge 66?

A. Yes, sir.

Q. Did Mr. Schardt know—do you know whether he knew whether or not you were a member of Lodge 66?

A. Yes, sir; he knew that I was a member.

Q. He did know?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down.

(Witness excused.)

Mr. Keele: We would like to recall Mr. Smith for some questions, if the examiner please.

Mr. Walsh: All right. George Smith, will you take the stand again, please?

GEORGE WILLIAM SMITH, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

*Cross-Examination.*

Q. (By Mr. Keele.) Mr. Smith, you are the same Mr. Smith who just testified a few moments ago here, after having been sworn, are you?

A. Yes, sir.

1095 Q. Were you one of the employees, former employees, of the Fansteel Company who were in buildings 3 and 5 during the period from February 17th to February 26th, 1937?

A. Yes, sir.

Q. Which building were you in?

A. 5.

Q. Were you a member of Lodge 66 at that time?

A. Yes, sir.

Q. You are still a member of Lodge 66?

A. Yes, sir.



Q. When did this conversation, to which you have referred, with Schardt and Luther Henry take place?

A. Well,—

Q. I think you stated around about the first of March, is that correct?

A. Yes, sir; the one with Luther Henry was around the first, and the one with Schardt was around the fifth.

Q. The one with Henry was around the 1st of March?

A. Yes.

Q. The one with Schardt about the 5th?

A. Yes.

Q. That is approximately correct?

A. Yes, sir.

Q. They knew that you were a member of Lodge 66, did they not?

1096 A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Mr. Mondro.

This witness has not been sworn, your Honor.

GEORGE MONDRO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: You are Mr. George Mondro?

The Witness: George Mondro.

Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like to claim the privilege of the witness, under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

*Direct Examination.*

Q. (By Mr. Walsh.) What is your address, Mr. Mondro?

A. 2130 Sheridan Road, Waukegan, Illinois.

Q. You will have to talkup louder than that, so that they can all hear you.

A. 2130 Sheridan Road.

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Q. You were employed by the Fansteel Metallurgical Corporation, were you?

A. Yes, sir.

Q. When were you first employed there?

A. August 1936.

Q. August 1936?

A. Yes, sir.

Q. What was your job there?

A. Taking care of the carbide furnace.

Q. You are a member of Lodge 66?

A. Yes, sir.

Q. When did you join Lodge 66, if you remember?

A. Sometime in December.

Q. Were you one of the men who occupied the company's buildings—

A. No.

Q. —between the 17th of February and the 26th of February?

A. No, sir.

Q. Oh, you were not?

A. No.

Q. Sometime after February 26th, did you have a talk with anybody about coming back to work?

A. The first one that I came in contact with was Red Hall.

Q. What is Red Hall's job with the company?

A. He is foreman in the railway signal department.

Q. What did Red Hall say to you, if anything, and what did you say to him?

A. Well, he asked me when I was coming back to work, and I says, "I don't know."

Q. Did he say anything else to you?

A. Well, yes; he says to come into the office; that Presler wanted to see me.

Mr. Swiren: Who was that?

The Witness: Pressler.

Q. (By Mr. Walsh.) Who was Presler?

A. He was foreman in the tantalum department.

Q. Is that Gene Presler?

A. Yes, sir.

Q. Did you go into the office and see Presler?

A. I did.

Q. What did he say to you?

A. Well, he says,—he asked me if I was ready to come to work.

Q. What did you tell him?

A. I says, "No."

Q. Did he say anything else?

A. Well, he says—he handed me a card and he says, "Here is a pass. You can get through in the morning. I want to see you in the morning"—the following morning.

Q. Did he know that you were a member of Lodge 66?

A. Yes, sir.

1099 Q. Now, did you talk to anybody else?

A. Well, after I didn't show up there for a couple of days, why, I met him after lunch hour, coming out of the cafe. Mr. Simms, the foreman of the tungsten department, came out first, and he seen me, and he says, "I thought you was coming back to work?" And I says that I wasn't.

Then Mr. Presler came out, and he asked me why I didn't call him; and I says, "I will think it over."

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) Did you fill out a new application, Mr. Mondro?

A. Well, I think I signed my name and my address to it, and my age, but that is about all.

Q. And you thought that the application was accepted, for you to come back to work the next day; is that right?

A. I didn't think it was accepted; no, sir; because I didn't fill it out.

Q. What is that?

A. I didn't think it was accepted because I didn't fill it out.

Q. Well, you signed it and handed it in; is that right?

A. I signed my name to it, yes.

Q. To whom did you give it?

A. Well, Mr. Luther handed it to me, but nobody  
1100 accepted it from me. I just went on out, and I just left it there.

Q. You left it where?

A. On the desk.

Q. On Mr. Henry's desk?

A. I don't know whose desk it was.

Q. Well, was Mr. Henry sitting at that desk?

A. No.

Q. (Continuing) When he talked to you?

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A. No, sir. He just handed me the application, and I went away and left it there.

Q. You do not know whose office that was?

A. No, sir.

Q. Did you get a card—

A. Yes.

Q. —to come into the plant?

A. I did.

Q. What did you do with that card?

A. I have got it in my pocket.

Q. Do you still have it?

A. Absolutely.

Q. Would you let me see it?

A. Sure.

(The card was produced.)

Mr. Swiren: If the examiner please, I ask that this card be marked as respondent's exhibit No. 5 for identification.

1101 (The card referred to was thereupon marked Respondent's Exhibit No. 5 for identification.)

Q. (By Mr. Swiren.) I now show you respondent's exhibit No. 5 for identification, which you have produced at my request, and ask you whether that is a new form of card that was different from the one that was used prior to February 17th by the employees.

A. Yes, sir; that is right. The other one was yellow, and this is red.

Q. Yes. This is the employee's pass that it is necessary to have, on order to get through the gate, is it not?

A. Yes, sir.

Q. You did not report for actual work after you had handed in your application?

A. No.

Q. (Continuing) Or after you left it on the desk, and after you received this card?

A. No.

Q. By the way, you received this card from whom?

A. Gene Presler.

Q. And you received that after you had signed the application?

A. Before I had signed the application.

Q. Before?

A. Yes, sir. He brought it right out, and just left it there.

Q. Left it there?

1102 A. Yes.

Q. And you signed the application right at that time?

A. Well, all that I did was to put my name down, and my address; that was all.

Mr. Swiren: We would like to offer respondent's exhibit 5, for identification, in evidence as respondent's exhibit 5.

Mr. Walsh: I do not know that I will object to its being offered, Mr. Examiner. However, I would like to know the purpose of the offer.

Mr. Swiren: Would you prefer that we wait? We have just had it marked for identification. We will withdraw the offer at this time, and wait, and put them all in together in our own case.

Mr. Walsh: As I say, I do not know that I will object to it, even when you do offer it—

Mr. Swiren: Well, we will wait.

Mr. Walsh: All right.

Mr. Swiren: And have the exhibits all offered at the same time.

Mr. Walsh: All right.

Mr. Swiren: You do not have any objection to giving up this card now, since you are not working at the plant, do you?

The Witness: Any objection?

Mr. Swiren: Yes.

The Witness: Well, I don't know. I think I would  
1103 rather keep it, if it is all the same.

Mr. Walsh: Would you care to have it photostated, and put in a photostatic copy?

Mr. Swiren: This is only for your use in getting in and out of the plant as an employee, is it not?

The Witness: Well, but still—

Mr. Swiren: Is that right?

The Witness: Yes.

Mr. Swiren: We ask that it be received as a part of the record of this case.

Mr. Walsh: Are you offering it at this time?

Mr. Swiren: No. We will offer it when our turn comes, but we ask at this time that it be retained, as a part of the record in this case.

Mr. Walsh: Would you mind having it photostated, and putting in a photostatic copy?

Mr. Swiren: I do not think that a man, who does not

use the card for the purposes for which the respondent issued it, has any business having it, anyhow.

Mr. Walsh: Well, would you mind just explaining to me for what purpose you are offering it, or going to offer it?

Mr. Swiren: I am not offering it as yet. We will offer it when our case goes in.

Mr. Walsh: Well, it is the property of this man, and if you are going to retain it, and take it away from him, 1104 we ought to know why that is being done.

Mr. Keele: If the examiner please, it is not the property of this man.

The Witness: You say it is not?

Mr. Keele: It is just loaned to him, given to him by the company, so long as he is an employee. Rather than have any quarreling about it, however,—

Mr. Swiren: This man has no business with this card.

Mr. Block: It is just like any other document, if the examiner please. The Board has the right to keep it under its control until the case is disposed of.

Mr. Walsh: Well, I will not object.

Trial Examiner Dudley: Mr. Mondro, do you object to this card being filed in the record of the Board here, or do you want it back?

The Witness: I don't want him to have that card, Your Honor. I want that card. It was given to me.

Mr. Walsh: It would be a part of the record, naturally, Mr. Mondro. We will not give it to him. We will keep it in the record.

The Witness: All right.

Trial Examiner Dudley: It will be kept in the record, and go eventually to Washington.

The Witness: O. K.

Trial Examiner Dudley: And if you want it back, 1105 we can have a copy photostated, and you can keep this, being the original.

Mr. Walsh: I would suggest that we just leave it in the record.

Mr. Swiren: That is exactly what I had in mind.

Trial Examiner Dudley: And then if you still want it, you can get it from the Government.

The Witness: All right.

Trial Examiner Dudley: Mr. Reporter, I will ask you to keep this card with the other exhibits. If you want it at any time, Mr. Mondro, let us know.



The Witness: O. K.

Trial Examiner Dudley: Are there any further questions?

Mr. Swiren: Nothing further.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down.

(Witness excused.)

Mr. Walsh: Paul Wells. This witness has not been sworn, if the examiner please.

PAUL WELLS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Paul Wells?

The Witness: Yes, sir.

Mr. Collins: You were subpoenaed to appear here before the examiner today, were you?

1106 The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like to claim the privilege of the witness, on behalf of the witness, under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

*Direct Examination.*

Q. (By Mr. Walsh.) State your address, Mr. Wells.

A. 1638 South Park, North Chicago.

Q. You were employed by the Fansteel Metallurgical Corporation, were you?

A. Yes, sir.

Q. When did you first become employed there?

A. The middle of April 1936.

Q. What was your job over there?

A. Apprentice in the tool room.

Q. Are you a member of Lodge 66?

A. Yes, sir.

Q. When did you become a member of that Lodge?

A. Well, sometime during the month of July 1936.

Q. Was your membership known to the company?

A. Well,—

Q. Did the foreman, or others, know that you were a member of Lodge 66?

A. Why, I think they did.

Q. Do you know?

1107 A. I don't know.

Q. Sometime after February 1937, did anyone connected with the company ask you to come back to work?

A. Yes.

Q. Who was it?

A. His name was Chester Hook.

Q. What does he do at the company?

A. He is an apprentice in the tool room.

Q. Will you just go ahead and tell the examiner what he said to you, and what you said to him?

Mr. Swiren: Just a moment.

A. I was called to the door—

Mr. Swiren: Just a moment. I object to that. There is no authority shown. We do not know what the conversation was, but it cannot bind us.

Trial Examiner Dudley: The objection is overruled.

Mr. Swiren: Merely because some party, an apprentice in the tool room, had a conversation with this man—

Trial Examiner Dudley: Overruled.

Q. (By Mr. Walsh.) You may answer the question.

A. Well, Chester was waiting at the door, when I came downstairs—

Q. Was this at your home?

A. Yes, sir.

Q. Do you remember the day?

1108 A. I think it was the first week in March, but the exact day I don't remember.

Q. All right.

A. I was called downstairs, and Chester was by the door, and I says, "What do you say, Chet?" and he says, "Well, it is up to you to say whether you want to work or not." And he says, "We are running full blast." And I says, "No, I went out with the rest of the boys", I says, "and I can't come back until they all come back."

Q. What did he say?

A. Well, then, he says, "Well, it is up to you." He says, "I will take care of your tools, if you want."

Q. Did you have any other conversation with anybody else about coming back to work?

A. No.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele.) Were you one of the fellows occupying buildings 3 and 5 of the Fansteel Company's plant?

A. Yes, sir.

Q. During that period, from February 17th to February 26th?

A. Yes, sir.

Q. You are a member of Lodge 66, are you?

A. Yes, sir.

Q. And you were a member at that time—or prior 1109 to February 17th?

A. Yes, sir.

Q. And that was known to the company, or to the officials of the company, was it?

A. Well, I don't know if it was known to the officials of the company, but the man I worked for knew that I belonged to the union, though.

Q. Who was that?

A. Mr. Henry Bergquist.

Q. You say he knew?

A. Yes, sir.

Q. He is one of the foremen?

A. No.

Q. Well, a straw boss?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Mr. Jackaway. Will you swear this witness, please, Your Honor?

JOHN JACKAWAY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Jack Jackaway?

The Witness: John Jackaway.

1110 Mr. Collins: John Jackaway.

The Witness: Yes.

Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?

The Witness: How is that?

Mr. Collins: Were you subpoenaed to appear here before the examiner this morning?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like, on behalf of the witness, to claim his privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

*Direct Examination.*

Q. (By Mr. Walsh.) What is your address, Mr. Jackaway?

A. 433 South Victory Street, Waukegan, Illinois.

Q. Were you employed by Fansteel?

A. Yes, sir.

Q. When did you first go to work there?

A. Well, I don't just remember the date, but it was around 7 years ago, or a little over.

Q. What is your job over there?

A. Well, I done different work; I worked on the furnaces, and done different jobs around there.

Q. Are you a member of Lodge 66?

A. Yes, sir.

1111 Q. Sometime after February 26th, 1937, did anyone connected with the company ask you to come back to work?

A. Well, I was sent for by a party.

Q. Who was the party who sent for you?

A. Mr. Chapman.

Q. What does Mr. Chapman do over there?

A. He is in the laboratory, but I don't know exactly what he does.

Q. Did you talk to Mr. Chapman?

A. Yes, I did.

Q. What did he say to you, and what did you say to him?

A. Well, he didn't have very much to say. All that he asked was if I wanted to come back, that was all. I told him I didn't see how I could.

Q. Did you tell him why you could not?

A. Well, no, I didn't tell him why.

Q. At that particular time, were there a number of men out?

A. Well, on strike, you mean?

Q. Yes.

A. Yes, sure. They were out on strike.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele.) You were one of the men occupying buildings No. 3 and 5 during the period from February 17th to February 26th, were you, Mr. Jackaway?

1112 A. How is that again?

Q. You were in the sit-down strike, were you?

A. I was in it, yes, sir.

Q. During the entire period?

A. Yes, sir.

Q. You were a member of Lodge 66 prior to February 17th, were you?

A. How is that?

Q. That is, before February 17th?

A. Yes, sir.

Q. You are still a member of Lodge 66?

A. Yes, sir.

Q. Have been continuously?

A. Yes, sir.

Mr. Keele: That is all.

*Redirect Examination.*

Q. (By Mr. Walsh.) Did Mr. Chapman know that you were a member of the Lodge?

A. I suppose he did, but I don't know.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

.(Witness excused.)

Mr. Walsh: W. D. Crump. This witness has now been sworn, if the examiner please.

1113 W. D. CRUMP, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is W. D. Crump?

The Witness: Yes, sir.

Mr. Collins: Were you subpoenaed to appear before the examiner here this morning?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, if the examiner please, I would like to claim his privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

*Direct Examination.*

- Q. (By Mr. Walsh.) Your address, Mr. Crump?  
 A. 2103 Sharon Lane, Waukegan, Illinois.  
 Q. Were you employed by the Fansteel Company?  
 A. Yes, sir.  
 Q. When were you first employed there?  
 A. Well, I first started there in 1916.  
 Q. 1916?  
 A. Yes, sir.  
 Q. Have you worked there continuously since that time?  
 A. No, sir; I was off during the War, and then I went back again in 1921; and then I believe it was in 1929 Mr. Anselm transferred me to the Balkite Division, and I was in the Balkite Division until they went bankrupt; and at that time  
 1114 I was laid off; I was not transferred back to the Fansteel side again. There was a period in there of about 3 or 4 months, I believe, when I was laid off, or discharged, or whatever you want to call it; and then I was called back to work by Mr. Henry. Mr. Dow claimed at that time that I started new employment, that I came back as a new man, and they did not consider my previous record at all, although since 1916, except for War service, and a period of 3 months during the slack season when I worked for the Cyclone Fence outfit, I have been continuously employed by the Fansteel Corporation, either on the Fansteel side or the Balkite side.  
 Q. What is your work over there—or what was your work?  
 A. Well, at the last, I was in the swedging department.  
 Q. And how long had you been in that department?  
 A. Since 1931, I believe it was.  
 Q. Had you received any raises from the time you went in there until you were finally—or, until February 17th?  
 A. Well, when I first went in, I went in with a cut.  
 Q. From what you had been receiving, when you were working at Balkite?  
 A. When I was laid off, working on the Balkite side.  
 Q. Yes?  
 A. Then I went along for a while, and I did get a raise in there of 5 cents; and then there was a period of time, after the union activities started, and then we did get a few raises.  
 1115 Q. You participated in the raises, I take it?  
 A. Yes, sir.  
 Q. With the rest of the fellows?



A. At the end; yes, sir.

Q. Now, had there been any criticism of the work which you were doing in the swedging department, by your foreman, or by any other official of the company?

A. Well, our sub-foreman, the man we took orders from in there, why he never was really designated as our foreman, but he laid out our work for us; and after he received this job, he caused to be installed an extra machine in there, and he expected us to take care of that machine.

That is, there were two of us on what they call the "continuous machine."

1116 I had one, and Nic Bankowisch had the other. So he installed—or he had installed a finishing machine, and because we were qualified to operate these machines in an easy manner, that is, so we did not have to push ourselves, which he himself could not do, we had time enough to keep this other machine rolling. In other words, we were doing three men's work for two men's pay. We received no compensation for that at all.

Q. Now, were you on the night shift just prior to February 17th?

A. Yes, sir.

Q. On February 17th, what time did you arrive at the company's plant?

A. I believe it was around twenty minutes, or a quarter to three.

Q. And you were there—

A. That was the usual time when I got there.

Q. And you were ready to go to work; is that right?

A. Yes, sir.

Q. There was some trouble there at that time, was there not?

A. Yes, sir, there was. Mr. Lund—

Q. Who is Mr. Lund?

A. He was the watchman at the gate.

Q. Yes.

1117 A. I got there, it seemed, just as the thing started, or just as the people started coming out, because he was going to leave me in the gate, he started to open the gate to leave me in, when Mr. Schultz ran over from the office and held me up for the time, and told me to wait awhile, and he talked with Mr. Lund, and Mr. Lund came out to me and told me to come back tomorrow. Well, I waited around a little

while, and I asked him what the trouble was. Well, he said, they would let me know. So then I left and went home.

Q. They told you they would let you know—what?

A. Well, I suppose when to come back to work, or what to do; but they did tell me to come back "tomorrow."

Q. Yes.

A. The following day.

Q. Did you come back the next day?

A. Well, I was down there.

Q. Was there any work going on?

A. No, sir, there wasn't any work that I could see going on.

Q. Did you later draw your pay from the company?

A. Yes, sir.

Q. What happened at that time?

A. Well, I went down and I received one check, and there was nothing said at that time, and when I went down to draw my last check—I had one day coming—I was asked by a deputy, I believe it was, or whoever was inside of the door 1118 there, if I wanted to fill out an application card, or what I wanted in the office; and I told him that I was down to receive my pay; so he sent me over to the information desk.

So they sent up my number, and Schardt, the timekeeper—I don't know his first name; George, I believe—came down with my pay check and took up my pass; and he told me at that time that when we were called back to work, a new card would be issued. I didn't want to give up my card. It was yellow, a yellow card. But he says, it would be no good any more, because the company was going to issue a red pass, and that is what we would receive when we came back to work. That was all there was to it at that time.

Q. Did you know that you were a member of Lodge 66?

A. Well, I am sure that our foreman knew it—or our subforeman.

Q. And since that time you have not been notified to return to work?

A. No, sir, nobody has called me at all.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Keele.) Mr. Crump, you did return to the plant on February the 18th, did you not?

A. Oh, yes.

Q. And on the 19th?

A. I was down there pretty nearly every day.

1119 Q. You worked, did you not?

A. No, not at the plant.

Q. Oh, no, not at the plant.

A. No.

Q. I understand that, but you carried in bedding and food, or helped carry bedding and food in to the men, did you not?

A. Well—

Q. Yes, or no.

A. I inspected it.

Q. Well—

A. Yes, I seen that it went in.

Q. You assisted in it?

A. Yes.

Q. In getting food and supplies in to them?

A. Oh, yes.

Q. You knew that there was an injunction against doing that, did you not?

A. No, sir, I didn't see any injunction about putting food or bedding in there.

Q. No, but you knew that there was an injunction against the men staying in there?

A. Oh, yes.

Q. You knew that?

A. Oh, yes.

Q. But you were assisting them in staying in there?

1120 A. Well—

Q. You were making it possible for them to stay in there, or helping to make it possible, were you not?

A. I believed we had the right to do it.

Q. Well, I say, you were?

A. Oh, yes.

Q. I am not going to argue with you about the theory of it. You were.

A. Yes, sir.

Q. Have you a brother who was formerly employed at Fansteel?

A. Yes, sir.

Q. That is Lester Crump?

A. Yes, sir.

Q. And he was in the buildings?

A. Yes, sir.

Q. During this period from February the 17th to February the 26th?

A. Oh, yes.

Mr. Keele: That is all.

*Redirect Examination.*

Q. (By Mr. Walsh.) Mr. Crump, I believe you told Mr. Keele that you were inspecting packages of bedding, and things, going in there?

A. Yes, sir, we were.

1121 Q. Did anybody give you any permission to do that?

A. Yes, sir, the officers at the buildings, inside the gate, the uniformed officers. We didn't pay any mind to those base ball bat artists, but any man in uniform, we respected. As long as a package was inspected there, they said we had the right to put it in. As long as there was no arms, or liquor, or anything that could be used to do any damage, it could go up into the buildings. So they had a place inside, where they inspected packages, and we had a place outside, and anybody that brought anything in there, we felt to see that there was no knives, and so forth.

Q. You inspected it?

A. Yes.

Q. And passed it through the fence?

A. Yes.

Q. And the officers inspected it inside the fence; is that right?

A. No, we tied it on a line, and we let it over the fence, and we dropped it down so that they could put their hands in and feel.

Mr. Walsh: All right.

*Recross Examination.*

Q. (By Mr. Keele.) Did you get any permission from any of the officials of the company, to do that?

A. No, sir, we did not.

1122 Q. They never stopped us. Mr. Henry was there, and he seen it going on, and he never refused us, or anything else.

Q. There were quite a number of people on the outside of the fence at that time, were there?

A. Yes, sir, there was lots of them.

Q. Who authorized you to send that food in there, or to put that food in there?

A. Nobody authorized me to send it in.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Art Holm, Sr. This witness has not yet been sworn, your Honor.

Trial Examiner Dudley: Raise your right hand and be sworn.

ART HOLM, SR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Art Holm, Sr.?

The Witness: Yes, sir.

Mr. Collins: Were you subpoenaed to appear here before the Examiner this morning?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like on behalf of the witness to claim his privilege under Section 1123 11, paragraph 3 of the United States Labor Relations Act.

Trial Examiner Dudley: The privilege is granted to the witness.

*Direct Examination.*

Q. (By Mr. Walsh.) State your address, Mr. Holm.

A. 142 McKinley Avenue, Waukegan, Illinois.

Q. You were formerly an employe of the Fansteel Metallurgical Corporation, were you?

A. Yes, sir.

Q. I think you were foreman there, were you not?

A. Yes.

Q. How long had you been a foreman?

A. Well, I think I was foreman about 17 or 18 years.

Q. How long had you been employed by the company altogether?

A. A little over 19 years, I think it was.

Q. I believe that you were discharged from this company sometime in February, were you not?

A. Yes, sir, February the 26th I got a nice letter that had 21 cents worth of stamps on it, saying that I was discharged.

Q. And at the time you were discharged, you were not a member of Lodge 66, were you?

A. No. I couldn't be.

Q. You were not eligible for membership in Lodge 66 at that time, were you?

A. No, sir.

1124 Q. Do you recall when Mr. Anselm returned to Fansteel in the fall of 1936?

A. Yes, sir. He was there—he must have come around—well, he was there when I come back from my vacation, so he must have gotten there the latter part of August.

Q. Well, when did you return from your vacation?

A. Two weeks after Labor Day.

Q. Did you have any talks with Mr. Anselm after you got back from your vacation?

A. Yes, sir. He called me into the office the first morning when I came back.

Q. Did you have a talk with him at that time?

A. Yes, sir.

Q. Will you tell the Examiner what you talked about, what was said by him and what was said by you?

A. Well, I can't remember every word, but I can remember the story. He called me over into the office, and he says—that was the first I knew he was back, of course; and I went in and says, "Hello, Al. When did you get back?" "I got back a couple of weeks ago," he said. "Well" I said, "I wish you luck. I think you are going to it this time"—or words to that effect. And he says, "Well, I suppose you think" he says, or "the men seem to think that I am back here to break up the union." "Well" I says, "Al, what can you expect, putting up a big fence around the plant, and you have been gone for a couple of years. What else can they think you are going to do," I says. I says, "You know dog-gone well, they can't think anything else." "Well" he says, "I don't want them to have that feeling. If I don't make a go of it this time, I am going up to my fishing lodge again in northern Wisconsin." "Well" I says, "I think you will be headed for your fishing lodge pretty soon."

Q. What did he say to that?

A. Well, he just laughed;—he was good-natured. Of course he knew I was always sincere. Him and I were friends for years.

Q. You had known him for 15 or 16 years, had you?

A. Oh, yes; I had known him for 20 years.

Q. Now, during the progress of some labor trouble that occurred out at the plant, did you take any part in that trouble?



A. In the trouble?

Q. Yes,—did you take sides, on one side or the other?

A. Well, I naturally took sides—I always take sides with the laboring man, the laboring man's side. I always take his side. I am a laboring man myself.

Q. As a matter of fact, you had a son who was in one of the buildings, did you not?

A. Yes, sir.

Q. Did you do anything to aid the men who were in the buildings?

1126 A. Well, I guess I done something; I helped them all I could. I didn't like to see them freeze to death, or starve to death.

Mr. Walsh: You may inquire.

Mr. Keele: If the Examiner please, I think that the testimony of this witness—and I so move the Trial Examiner—should be stricken from the record, on the ground that there is nothing connecting up this man in any way with the strike. He was not a member of the union; he was a confidential employe who was discharged; and he has not shown that there was any statement, he has not shown that there was anything in the letter, to that effect. The charge in the complaint is that he was suspected, whatever that means, of being a member of the union, and yet he testifies that he was not even eligible to membership in the union, and that everybody knew he could not be a member.

I do not see how this has any connection—

The Witness: I joined the union after I left.

Mr. Swiren: Just a moment. These remarks are being addressed to the Examiner.

Trial Examiner Dudley: Just a moment.

Mr. Keele: I do not believe there is any evidence connecting this up in any way.

Trial Examiner Dudley: Well, I will overrule the objection, or deny the motion, and let the evidence stand, in 1127 order that it may be examined by the Board and by myself later for such action as we may deem proper.

Q. (By Mr. Walsh.) You are a member of the union now, are you not?

A. Yes, sir.

Q. Has anybody from the company ever asked you to come back to work?

A. No.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Keele.) When did you join the union, Mr. Holm?

A. Well, a week after they were all out of the buildings, sir.

Q. You got that letter on the 25th of February—or the 26th?

A. The 26th.

Q. And you joined the union a week later?

A. Yes, sir.

Q. What position did you hold on February the 25th, at the Fansteel Company?

A. On February the 25th, I was still rated as a foreman, I suppose.

Q. Foreman of what department?

A. The maintenance department.

Q. Maintenance department?

1128 A. Yes, sir.

Q. And how long have you held that job? You had been on that job for sometime, had you not?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: At the moment, if the Examiner please, I have encountered a dearth of witnesses.

Mr. Keele: It is nearly noon. Supposing we adjourn a little early and reconvene a little early this afternoon.

Trial Examiner Dudley: At 1:30?

Mr. Walsh: Is that agreeable to counsel?

Mr. Keele: Yes.

Trial Examiner Dudley: Very well, then; I will declare a recess at this time until 1:30 this afternoon, at which time we will reconvene in this room.

(Whereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m.)

*After Recess.*

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing is reconvened.

Mr. Walsh: I will recall Mr. Swanson. This witness 1129 has previously been sworn, your Honor.

CARL ANDREW SWANSON, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Mr. Swanson, subsequent to February the 26th, 1937, did the union authorize a committee to call upon the company?

A. Yes, sir.

Trial Examiner Dudley: What was that date, please, Mr. Reporter?

(The question was read.)

Mr. Walsh: Mr. Reporter, will you mark this Board's exhibit No. 25 for identification, please.

(The document referred to was marked Board's exhibit No. 25, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, I will hand you what has just been marked by the reporter Board's exhibit No. 25 for identification, and I will ask you if these are the minutes of the meeting of the union, of March 3rd, 1937?

A. As I recall it, it was a resolution that was adopted at that time, at that meeting.

Q. I see.

A. (Continuing.) To give power to the committee named in there.

1130 Q. To call upon the company for certain purposes?

A. Yes, sir.

Q. What were those purposes?

A. To try to open negotiations for collective bargaining, in recognition of Lodge 66 and its members.

Mr. Walsh: I offer Board's exhibit No. 25 for identification, in evidence, if the Examiner please.

Mr. Keele: It is objected to on the ground that it purports to be the action of the employes of the company. The evidence thus far adduced has shown, however, that the men purporting to be employes, in this document were discharged as of February 17th, and they were not employes at any time subsequent thereto.

Trial Examiner Dudley: I will overrule the objection on the ground that the resolution is pertinent, even though it is pertinent only to former employes, in view of the testimony which we have taken today.

However, I will ask the reporter to read me the questions and answers in connection with the identification of this document.

(The record was read as above recorded.)

Trial Examiner Dudley: That is sufficient. Mr. Walsh, the witness has not identified this yet, as being the minutes.

Mr. Walsh: I probably was in error, if the Examiner  
1131 please. It is a resolution that was passed. I thought it was the minutes of the meeting.

Trial Examiner Dudley: Is it the minutes, or a resolution?

Mr. Walsh: Pardon me?

Trial Examiner Dudley: Is it the minutes, or a resolution?

Mr. Walsh: No, it is a resolution that was passed at that meeting. I thought it was the minutes of the meeting, but it is a resolution.

Q. (By Mr. Walsh.) This does not constitute the entire minutes of that meeting, does it, Mr. Swanson?

A. No, sir.

Q. This is an excerpt—

A. Yes.

Q. —from the minutes?

A. Yes, sir.

Q. It is a resolution?

A. Yes, sir.

Q. That was passed at that meeting?

A. Yes, sir.

Trial Examiner Dudley: It may be admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT 25, Witness Swanson.)

1132 Q. (By Mr. Walsh.) Mr. Swanson, pursuant to that resolution, did the committee call upon the management  
—did the committee of the union call upon the management?

A. You mean, did we carry that resolution out?

Q. Yes.

A. Why, yes, sir.

Q. What did you do in the carrying out of that resolution?

Mr. Swiren: Just a moment. We object to the entire line of questioning with respect to action authorized or taken by men who were discharged for seizing and holding the property of the company. We do not think that men who were properly discharged had any further rights to bargain on behalf of themselves, as employees, or former employees.

Trial Examiner Dudley: I call counsel's attention to the fact that the complaint sets out, among other things, the re-

refusal on the part of the company of the reinstatement of certain employes; and that your answer sets up various reasons for the refusal to reinstate. Therefore, the activities of both the union and the company, as to what the reasons were for the refusal to reinstate, would be pertinent.

Mr. Swiren: But this is after—

Trial Examiner Dudley: Your answer likewise—go ahead.

Mr. Swiren: Of course, the question as to whether a man was reinstated or not, is immaterial, if he was discharged for cause, or for any reason not condemned by the act that 1133 we are considering here today.

Trial Examiner Dudley: But your answer goes into the reason for the refusal of reinstatement, likewise.

Mr. Swiren: Yes, but this is all after the date of failure to reinstate.

Trial Examiner Dudley: And your answer likewise deals with times after the discharge.

Mr. Swiren: The only dates, the two dates with respect to these items, are February the 17th and February the 27th. We are here talking about proposals by these men to negotiate or bargain collectively at a time when, the evidence shows without dispute they were not employed, and had not been required to sever their connection with the company for any reason condemned by the National Labor Relations Act.

It seems to me that there is no reason to go into that until they lay a foundation. That foundation has not yet been laid. They have not shown the slightest bit of evidence yet, with respect to discharge or reinstatement.

Trial Examiner Dudley: It will be admitted, subject to your objection and exception.

Mr. Walsh: Answer the question, please.

The Witness: What was the question?

Mr. Walsh: The reporter will read it.

(The question was read.)

1134 A. The committee had a meeting, and decided upon a time to call upon the management, and a document was formed to present to the company, to express certain desires of this organization; and we decided upon, I believe, the time of one o'clock, but I am not positive of that. We went to the office of the Fansteel Metallurgical corporation, and I acted as spokesman. I went to the information desk and told the girl there that there was a committee that would like to see the management for a few moments. She asked me to wait for a few minutes and she would see.

Shortly afterwards, why, we were invited to go up to Mr. Aitchison's office. We went up there, and when we arrived there we found Mr. Aitchison, president of the firm, Dr. Driggs, I believe in charge of the laboratory and laboratory work, Mr. Anselm, the plant superintendent, and I believe there was a stenographer there.

I addressed Mr. Aitchison, and told him that this committee had something for their consideration, and that we had it in writing, and that we would like to have the answer that we took back in writing; and I handed him a copy of it. He started to read it, and he handed it—after he had read it, he handed it to Mr. Anselm; and in the meantime. I had another copy and I asked Dr. Driggs if he would care to see the other copy that I had, which was the same, to save time, and he said, yes, that he would, and he read it.

1135 After Mr. Anselm had finished reading the copy he had, he handed it back to Mr. Aitchison, and Mr. Aitchison made a remark to the effect "It is the same as before" or something like that, "isn't it, Al?"

Then, there was an interruption at that time; somebody came to the door and spoke to somebody, some message, I don't know what it was; and then I asked if there was any further discussion, and he said, "No." He said, "You have asked for an answer in writing, and we would like to take that privilege, and give you that answer in writing."

And then I asked him if we could have it immediately, and he said, "No", that they would like to have a little time to consider the matter, and they would give us—send us a written answer at the most opportune moment.

Q. And did you get any answer from Mr. Aitchison?

A. Yes.

Q. To that proposal?

A. Yes, sir.

Mr. Walsh: Counsel, will you see if you have a copy of the proposal?

Mr. Swiren: If we have a copy?

Mr. Walsh: Yes, and would you furnish us with a copy, if you have one.

Mr. Swiren: I think we have: I will check up and see.

Mr. Walsh: They do not have a copy.

1136 Mr. Swiren: Is this what you want?

Mr. Walsh: Yes. Please mark this Board's exhibit No. 26 for identification, Mr. Reporter.



(The document referred to was marked Board's Exhibit 26, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, did you keep a copy of the proposal which you submitted to Mr. Aitchison?

A. There was a copy, yes.

Q. You do not have that in your possession at this time, do you?

A. No, sir; I can't find it, at the present time.

Q. I will hand you what has been marked Board's exhibit No. 26 for identification, and ask you if that is the letter that you received from Mr. Aitchison, in reply to the proposal that the committee submitted to him?

A. Yes, sir.

Mr. Walsh: I offer it in evidence.

Trial Examiner Dudley: You will make the same objection, I take it.

Mr. Swiren: Yes, it is objected to on the same grounds that we objected to the entire line of inquiry.

Trial Examiner Dudley: The objection is overruled for the same reasons, and the document is admitted.

(The document referred to was received in evidence as BOARD'S EXHIBIT 26, Witness Swanson.)

1137 Q. (By Mr. Walsh.) Did you do anything or did you have any further meetings with Mr. Aitchison about this same matter?

A. Yes, sir—that is, there was another attempt made by the committee.

Q. Did you submit a further proposal at that time?

A. At a later date, we did.

Q. What was that date?

A. I believe it was around March 5th or 6th, as I recall it.

Q. You submitted a proposal in writing at that time, did you?

A. Yes, sir.

Q. And what did that—or who was present at the time you submitted that to the management?

A. Well, there was Harold Dreyer, Frank Latz, myself, Mr. Anselm, Mr. Aitchison, Mr. Driggs, and a stenographer.

Mr. Walsh: Mr. Reporter, will you mark these Board's exhibits 27 and 28 for identification, please?

(The documents referred to were marked Board's Exhibits 27 and 28 respectively, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, I will hand you what

has been marked Board's exhibit No. 27 for identification and ask you if that is a stenographic transcript of that meeting?

A. I believe it is.

Q. I will hand you what has been marked Board's 1138 exhibit No. 28 for identification and will ask you if that is the reply of the company to the proposal which you submitted on March 5th, 1937?

A. Yes, sir.

Mr. Walsh: I will offer these both in evidence, if the Examiner please.

Trial Examiner Dudley: The same objection, I take it?

Mr. Swiren: The same objection.

Trial Examiner Dudley: The objection is overruled for the same reasons, and the documents are admitted in evidence.

(The documents referred to were received in evidence as BOARD'S EXHIBITS NOS. 27 AND 28, respectively, Witness Swanson.)

Q. (By Mr. Walsh.) Did you have any copy of the proposal which was submitted on March 5th, 1937?

A. There were copies, yes, sir, but they are not—they have not been able to be located up to the present time.

Mr. Walsh: May we have a copy of that proposal also?

Mr. Keele: Yes.

Mr. Swiren: I think we have that.

Mr. Walsh: You will submit it. You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) Mr. Swanson, referring to the resolution that appears as Board's exhibit No. 25; was that adopted at a meeting of Lodge 66?

A. Yes, sir.

1139 Q. And can you tell us who was present at that meeting?

A. Why, I couldn't tell you who was present at that meeting, no, sir.

Q. Would you say that most of the people at that meeting were at that time working at the Fansteel plant, or were not at that time working at the Fansteel plant?

A. I would say that almost entirely, all of the people present at that meeting were employes of the Fansteel Metallurgical Corporation—

Q. I did not ask you that.

A. —on strike.

Q. I did not ask you as to your opinion as to whether they were employes or not. I want to know whether they were working at that time.

A. They were strikers at Fansteel.

Q. Were they working in the Fansteel plant at that time?

A. They were not working in the plant at that time.

Q. You had a considerable number of members who at that time, and subsequently thereto, did work at the Fansteel plant, did you not?

A. I don't understand that question.

Mr. Swiren: Read it, please.

(The question was read.)

Mr. Swiren: I do not think you understand my question. Mr. Swanson: I am talking about, at the time of 1140 this meeting. The exhibit will give the exact date—

Mr. Walsh: March 3rd.

Mr. Swiren: March 3rd, 1937.

Q. (By Mr. Swiren.) A large number of your members were at that date actually working in the Fansteel plant, were they not?

A. No. There was—on March 3rd, there was only just a few of our members that were working at the plant.

Q. Well, do you know who those were?

A. No, I couldn't identify them at this time.

Q. Were they at that meeting?

A. No, sir.

Q. So far as you know was anyone who was at the date of that meeting actually working in the Fansteel plant, at that meeting of March 3rd?

A. At the present time, there is.

Q. No, I am talking about people who were then working.

A. There was no one working of course, who was at the meeting at that time.

Q. No.

A. (Continuing.) Working in the plant, at that time.

Q. And were you purporting to act on behalf of people who were not at that meeting, when you came to see Mr. Anselm and Mr. Aitchison?

1141 A. We were acting or purporting to act, for the members of Lodge 66.

Q. You assumed that you had authority to act for everyone who had ever signed an application card for member-

ship in the Amalgamated Association of Iron, Steel and Tin Workers; is that right?

A. That was our assumption.

Q. And you do not know whether any of the authority created by any of the members, was terminated or revoked at any time, do you?

A. Sir?

Mr. Swiren: Read the question to him, please.

(Question read.)

A. I don't believe I understand that question—the full meaning of the question.

Q. (By Mr. Swiren.) Well, let me ask the question in another form.

A. All right, sir.

Q. Do you know whether all of the people who at one time or another signed application cards of the character offered in evidence, continued to want Lodge No. 66 to represent them and act for them?

A. They had made no express desire or wish that I know of, to the contrary.

Q. Were you in court at the trial before the Circuit Court when your counsel announced that 35 or 40 members 1142 had deserted the union, and the union did not want to act for them and represent them in that case?

A. I don't remember that statement exactly in that way, although there was a statement something to that effect.

I would not say it was that statement.

Q. Not in those words?

A. No.

Q. But that in substance?

A. There was something along that line, yes.

Q. And do you regard the men to whom your counsel referred, as still being members of lodge No. 66?

A. I don't believe that I recall the answer at that time. I believe there was some question—

Q. Well, do you regard those men to whom your counsel referred, in making that statement, as still being members of Lodge No. 66?

A. There has been no action taken by the Lodge, or anything like that; it has not been brought up, to my knowledge.

Q. Well, do you still regard them as members?

A. Yes, sir.

Q. And you think you are still authorized to act on their

behalf in bargaining with the Fansteel Metallurgical Corporation, is that right?

Mr. Walsh: I object to that, if the Examiner please. That calls for a conclusion of law, I believe. The witness 1143 is not qualified to answer that question.

Trial Examiner Dudley: It calls for a conclusion, but I will let it go in for whatever bearing it may have, subject to Mr. Walsh's objection and exception.

Mr. Swiren: Will you answer the question.

A. Not until there has been a meeting of the members. Their status down there, I couldn't explain. This is something new to me, and just what stand would be taken upon it, I couldn't say.

Q. (By Mr. Swiren.) Well, let me ask you this: you do not want to represent anybody who does not want you to act for them, do you?

A. I—

Mr. Walsh: Just a moment. That is objected to as immaterial, and as not proper cross-examination of this witness.

Mr. Swiren: Oh, I submit that the question is perfectly proper.

Trial Examiner Dudley: I will admit it.

Mr. Swiren: What is your answer?

The Witness: Read that question to me again, please. (The question was read.)

A. Well, now, that is kind of a hard question to answer. I can't say yes or no to that.

Q. (By Mr. Swiren.) It does not seem so hard to me. Is it hard for you to answer?

1144 A. I can answer the question in my own way, if you will let me do that.

Q. Well—

A. (Continuing.) But not saying yes or no; I can't answer it in that way.

Q. Answer the question yes or no, first, and then if you desire to add an explanation, you may add it. But let us have a yes or no answer first to the question.

Trial Examiner Dudley: If you can give a yes or no answer, of course, Mr. Swanson.

The Witness: Will you read me the question again, please? (The question was again read.)

The Witness: Not—

Mr. Walsh: Now, your Honor that calls for a rather more

involved answer, I think, than just a plain yes or no answer. I believe it is the theory of the National Labor Relations Act, that the majority of employes can act for all of the employes.

Mr. Swiren: I am only talking with respect to the specific authority.

Mr. Walsh: Well, now—

Mr. Swiren: I am not talking—

Mr. Walsh: That is a matter of law. The majority has the right to act for all of them.

1145 Mr. Swiren: I am not necessarily talking about the—

Mr. Walsh: (Continuing)—so that the question is not quite as simple as counsel would lead the witness to believe.

Mr. Swiren: It is a question of direct authority, and not the authority granted by the act.

Mr. Walsh: In many of these cases, the minority does not care to be represented by the majority. In fact, when elections are held, many of them vote to the contrary.

Mr. Swiren: What we are inquiring about is, using men who do not want to be represented by these people, to make up that alleged majority.

Mr. Walsh: Then I think the question should more properly be reframed.

Trial Examiner Dudley: Mr. Swanson, if you can answer the question that has been put to you yes or no, why, you may do so; and if you cannot answer it yes or no, answer it as best you can.

The Witness: Will you give me the question again?

Trial Examiner Dudley: The reporter will read it.

(The question was again read.)

A. Well, no, sir, not unless I felt it was for their own good—the majority of those involved, for their own good.

Q. (By Mr. Swiren.) If a majority of the men and women involved did not want you to act, but you thought it was for their own good, you would want to act for them  
1146 anyhow; is that it?

Mr. Walsh: That is objected to.

A. I don't believe that the word "majority" was mentioned before.

Q. (By Mr. Swiren.) I am mentioning it now.

A. Well, that is different now. If the majority said no, why, then, I would say that I would not wish to do so.

Q. Now, tell me, are there any of the people whose names



you carry on your membership lists who have now gone back to work, and are at work at the Fansteel Metallurgical Corporation?

A. I believe there is.

Q. Do you know how many?

A. I couldn't say at this time.

Q. Approximately?

A. I couldn't say approximately, either, for this reason, that there was a lot of young ladies who belonged to the union, and I didn't know at the time how many, or how many have gone back; I couldn't say at this time.

Q. Well, approximately?

A. It would be hard to give a guess.

Q. Approximately, so far as you know.

1147 A. Well, the last I knew of those who had gone back, at the time I knew of it, it would be about, say, thirty or thirty five, at the most, that I knew of, that I could safely say.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment, Mr. Swanson.

The Witness: Yes, sir.

Trial Examiner Dudley: Let me see Board's Exhibit No. 27, please.

Mr. Walsh: That is the stenographic report; the yellow sheet.

Trial Examiner Dudley: Yes.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley.) Mr. Swanson, referring to Board's Exhibit No. 27, was that stenographic report prepared by the stenographer in the office of the company at the time you held the second meeting?

A. That was prepared—as far as my knowledge goes, this was prepared, or was supposed to have been prepared by the stenographer afterwards, after the meeting; and they promised to forward this to me, and it came in a letter to me personally.

Q. Did she take down notes at the time you had the meeting?

A. She took down notes at both meetings,—yes sir.

Q. As far as you know, does that include everything  
1148 that was said at that meeting?

A. Let me see it again please. Well, as far as direct statements from one party to another are concerned, I think it does, to my knowledge. There might have been conversation from one party to another, on the management side, or on our side, our committee that is not in there, but I wouldn't say for sure; I don't recall exactly. I believe that there was something mentioned to me by one of the men, but whether that is all in there or not, I wouldn't say for sure.

Q. But as far as—

A. (Continuing.) But I think the substance of the different statements that were made—I believe that is in this record. There was conversation by one of the members of the management, before we came in.

Q. But as far as you know that includes all of the conversation that occurred between the management and the union representative, does it?

A. To the best of my knowledge now, it does, yes, sir.

Q. Now, referring back to the first meeting on March 3rd: Did the management enter into any discussion at that time with regard to the merits of the proposal, or the reasons for any prospective acceptance or rejection of that proposal?

The Witness: Will you give me that again?

Trial Examiner Dudley: The reporter will read it.

(The question was read.)

1149 A. No; at that time the only comment on the proposal I believe was what I mentioned before, that Mr. Aitchison addressed Mr. Anselm, I believe it was, and said, "It is about the same as before" or something to that effect; and that there would be no discussion. They did not want to enter into any discussion, because when we requested an answer in writing, they apparently took the attitude—they took advantage of the situation and did not wish to discuss it any further there. Our intention was to bring an answer back in writing, so that it could be explained fully to the members, as to the proposal; but they said they didn't wish to discuss it any further, because we had asked for an answer in writing and as long as I had put the proposition that way—although I explained fully that we came there to discuss it—of course I could not deny them that wish.

Trial Examiner Dudley: Are there any further questions?

Mr. Swiren: Yes.

Q. (By Mr. Swiren.) After you received the reply to

your first proposal, the reply of the company dated March 3rd, 1937, you made your second call on the management.

A. Yes.

Q. On March 5th,—is that right?

A. Somewhere around there, yes, sir.

Q. Did you read the reply that was made by the management?

A. Yes, sir.

1150 Q. Under date of March 3rd.

A. Yes, sir.

Q. Did you read the portion which says, "Immediately following the violent seizure of our plant, we announced the discharge of you and the others who participated in such action with you"?

Did you read that?

A. I read the entire contents of the letter, yes, sir.

Q. And did you say anything about that discharge, when you made your second call?

A. I don't believe that there was any discussion there. I don't remember whether there was any discussion about discharge at that time or not. We came in there, as I told you—

Q. You were the spokesman.

A. Yes, sir.

Q. For your group.

A. I believe—well,—

Q. Did you say anything about your having been discharged, or the discharge of the men who had seized and held buildings 3 and 5 with you?

A. I don't believe I did, sir.

Q. You did not say that your discharge was unwarranted, or anything of that effect, did you?

A. I couldn't recall.

1151 Q. Did you say anything at all about the fact that you had not been called back to work?

A. I believe that transcript there covers the conversation pretty generally.

Q. Well, I do not see anything to that effect in this transcript, that you have produced, so I take it that nothing like that was said. Is that right?

Mr. Walsh: Which are you referring to now, the meeting of March 3rd or the meeting of March 5th?

Mr. Swiren: I am not talking about the March 5th meeting.

Mr. Walsh: Well, that transcript is of the March 5th meeting.

Mr. Swiren: How is that?

Mr. Walsh: I say that is the March 5th meeting; that transcript is of the March 5th meeting.

Mr. Swiren: Just a moment. That is what I am talking about.

Mr. Walsh: Well, then, do you want the transcript? I presume it contains everything.

Mr. Swiren: I presume that, too.

Q. (By Mr. Swiren.) Are you and I clear about that now, Mr. Swanson?

A. Well, that is the general nature of it, yes.

Q. That is an accurate transcript, so far as you know?

—1152 A. Yes, sir, I couldn't deny it at this time.

Q. Now, at the first meeting on March 3rd, did you say anything about the discharge of you and the others who participated in the seizure and retention of Buildings 3 and 5?

A. I couldn't recall whether there was anything mentioned about that at that time or not. I don't believe that there was; I don't believe there was a very general discussion, outside of the fact that we asked the management to consider these preliminary negotiations, that we would like to present these preliminary negotiations, and we asked, or said we would like to have an answer in writing.

That is as far as I can remember now, although there might have been something said by somebody else.

Q. But you did not, as spokesman for your group, say anything about the discharge that I have referred to, did you?

A. Well, the exact words that I used when I came in, and what I said at the time, or when I was leaving,—I don't remember that.

Q. I did not ask you that—

A. Well, I might have stated that, when I addressed Mr. Aitchison. I don't know. You refer to the—if you have a transcript of that meeting here, maybe you can bring that out. I couldn't say.

Q. I am trying to get at the subject matter of the discharge of you and these others who seized the plant  
1153 and held it. That discharge was made on the evening of February 17th, the one we are talking about; is that right?

A. Well, the purpose of this visit here was strictly for negotiations, Mr. Swiren.

Q. Yes. Did you mention, discuss or raise any question about that discharge of the evening of February 17th, of yourself and the others who had participated in seizing and holding the buildings?

A. The discussion—

Q. Mr. Swiren: I submit to the Examiner that we have had sufficient mention of the fact, so that this witness can answer this question yes or no, or that he does not remember, if he does not remember. But we ought to have a direct answer to that question.

Trial Examiner Dudley: I think, Mr. Swiren, the witness answered my question to the effect that nothing happened in the line of conversation between the management and the men, outside of—

Mr. Swiren: This is the first meeting.

Trial Examiner Dudley: Well, at the first meeting, outside of the presentation of the proposal, and the reply.

Mr. Swiren: Then the answer ought to be a direct "no". If that is correct, it ought to be a direct "no", and nothing else.

Mr. Walsh: I submit, if the Examiner please, that 1154 this line of inquiry is hardly within the pale of the things covered on the direct examination.

Trial Examiner Dudley: Yes, Mr. Swiren has gone beyond the subject matter of the direct.

Mr. Swiren: Oh, I do not think I have gone beyond it at all, Mr. Examiner. This is just going to the propriety of negotiations by people who were discharged for seizing the plant. I think it is perfectly proper.

Q. (By Trial Examiner Dudley.) Mr. Swanson, do you recall any conversation between any representatives of the management and any representatives of the union, at the March 3rd meeting, regarding the discharge of the employees, or the seizure of the buildings, or any matters relating to such events?

A. No, sir.

Trial Examiner Dudley: Is that what you want to know?

Mr. Swiren: No.

Q. (By Mr. Swiren.) Did I understand your answer to the Examiner's question to be "No"?

A. "No."

Q. And is your answer the same with respect to the mat-

ter of reinstating men who had been discharged for seizing and holding Buildings 3 and 5?

A. Yes.

Q. That was also not a subject of discussion; is that right?

A. The management did not wish to discuss it at that 1155 time, Mr. Swiren.

Q. And you did not discuss it, or say anything about it, did you?

A. No, sir—that is, not to my knowledge, that I can remember at this time.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.  
(Witness excused.)

Mr. Walsh: Harold Dreyer. This witness has not been sworn, if the Examiner please.

HAROLD DREYER, called as a witness of the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Harold Dreyer?

The Witness: Yes, sir.

Mr. Collins: Were you subpoenaed to appear here before the Examiner today?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like to claim the witness' exemption, under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

*Direct Examination.*

1156 Q. (By Mr. Walsh.) Mr. Dreyer, will you state your address?

A. 323 McKinley, Waukegan, Illinois.

Q. How long have you been employed by the Fansteel Metallurgical Corporation?

A. Between nine and ten years.

Q. What job do you hold down there?

A. I hold a job as laborer; piecework job.



Q. In what department?

A. In Department 3, of the Contact Department.

Q. What do you do?

A. I cut, grind, crown and polish.

Q. Contact points?

A. Yes, sir.

Q. Tungsten?

A. Tungsten.

Q. Were you a member of the committee which called upon the management on March 3rd, relative to certain negotiations?

A. Yes, sir,—I believe it was the third.

Q. Do you have a copy of the proposal that was submitted at that time?

A. I think I have it, although I am not sure.

Q. Will you look and see if you can find that copy.

A. I will.

Q. You heard Mr. Swanson's testimony here about those meetings, did you not?

1157 A. Yes, sir.

Q. Is there anything that you can add to his testimony?

A. Well, I don't know.

Q. Well, then, supposing you just tell the Examiner in your own way what happened at the meeting of March 3rd?

A. Well, we went into the office, and we waited there some time before we were admitted into Mr. Aitchison's office. While we was up there, I had expected to negotiate for union recognition, but there was no conversation at all. They agreed to—after Mr. Aitchison, Mr. Anselm and Dr. Driggs had read the paper that was handed to them, they waited quite a few minutes before they answered, and then they decided to do it in writing.

Q. And they did send you a reply in writing, did they?

A. Yes, sir.

Q. I will hand you what has been marked Board's Exhibit No. 26, and ask you if that is the reply to which you refer?

A. Yes, sir, I believe it is.

Q. Now, did you have a further meeting with the management of the Fansteel Company?

A. Yes, sir.

Q. A few days later?

A. Yes.

Q. What happened at that meeting?

A. Well, we decided to take our attorney with us, 1158 but when we went to the information window and told them that the committee wished—with our representative, and told them that the committee wished to speak to Mr. Aitchison, why,—they held this meeting downstairs, in a different room; and Mr. Anselm came to the door, to permit us to go in, and we started to go in, but they didn't understand, I guess, that our attorney was with us, or our representative was there; and so he immediately closed the door in our faces, and said we had to get rid of him, to get him off the property, or off the premises. So he waited, our attorney waited, our attorney waited out in the car; and then later he came to the door and permitted us to come in.

Q. What happened at that meeting?

A. Well, at that meeting there was very little said.

Q. I will hand you Board's Exhibit No. 27 which is the stenographic transcript of what took place at that meeting, and I will ask you to read that, and testify as to whether anything else took place there?

A. That is what took place there, yes, sir.

Q. Nothing else happened but what is recorded on this paper; is that right?

A. I don't think there was anything else happened, no, sir.

Q. And at that meeting, you submitted a proposal in writing, did you?

A. Yes, sir.

1159 Q. And you received a letter from the company in answer to that proposal?

A. Yes, sir.

Q. I will hand you Board's Exhibit No. 28 and ask you if that is the letter which you received, in answer to that proposal?

A. Yes, sir.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) At the first meeting, Mr. Swanson presented the paper that you had prepared, and told the members of the management that he wanted a reply in writing so that he could submit it to the lodge; is that right?

A. Yes, sir.

Q. And Mr. Aitchison stated that they would comply with that request, and give you a reply in writing; is that right?

A. Yes, sir.

Q. Now, at that meeting, did you say anything, or did anyone of the committee say anything with respect to the discharge of you and the others who had on February 17th taken over and held Buildings 3 and 5?

A. No, sir, I don't remember of anything being said about that there at that time.

Q. Or was anything said at that time by you or your group, your committee, with reference to any mention, 1160 or any request made to you and the others who had been so discharged for taking over Buildings 3 and 5, to return to work, or be reinstated?

A. No, sir, I don't remember anything like that.

Q. Was there any discussion of that subject at all?

A. No, sir.

Q. Were either of those two subjects mentioned by you or your associates on the committee, at the meeting of March 5th?

A. I don't remember exactly what was in the paper, but I would recognize it if I seen it.

Q. No, I mean verbally. You did not say anything about either of those two subjects verbally, did you?

A. No.

Q. All of the men who appeared with you at the meeting of March 3rd, were men who had participated—your whole committee was made up of men who had participated in the seizure and retention of Buildings 3 and 5, during the period February 17th to February 26th; is that right?

A. Yes, sir.

Q. And that was also true of your entire committee on the occasion of the meeting of March 5th; is that right?

A. Yes, sir, it was the same committee.

Q. The same committee.

A. Yes.

Q. They were men who had engaged in taking over 1161 and holding the two buildings—

A. Yes, sir.

Q. During the period mentioned in February; is that right?

A. They were in the buildings.

Q. They were in the buildings.

A. That is right.

Mr. Swiren: All right.

Trial Examiner Dudley: Is that all?

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down; thank you.  
(Witness excused.)

Mr. Walsh: Frank Latz. This witness has not been sworn,  
your Honor.

FRANK LATZ, called as a witness for the National Labor  
Relations Board, being first duly sworn, testified as fol-  
lows:

Mr. Collins: Your name is Frank Latz?

The Witness: That is right.

Mr. Collins: You were subpoenaed to appear here before  
the Examiner this afternoon, were you?

The Witness: No.

Mr. Collins: Didn't you receive a subpoena?

The Witness: No.

Mr. Walsh: We will withdraw the witness then, your  
Honor.

1162 Mr. Collins: We will withdraw you for the present,  
Mr. Latz,—or rather Mr. Walsh will.

Mr. Swiren: What prosecution are you afraid of, Mr.  
Walsh?

Mr. Walsh: I haven't any idea, but I am not taking any  
chances.

(Witness excused.)

Mr. Walsh: At this time, if the Examiner please, I would  
like to put in the copy of the charter that we had transcribed,  
instead of submitting the entire charter.

Trial Examiner Dudley: Is there any objection, Mr.  
Swiren, to admitting into evidence a copy of the charter?

Mr. Swiren: If we objected to the charter—this is merely  
the substitution of a copy, as I understand it, for the origi-  
nal.

Mr. Walsh: Yes.

Mr. Swiren: I do not remember whether we objected or  
not. If we did, then the record shows it, and if we did not—

Mr. Keele: We did not object. We permitted the exhibit  
to go in.

Mr. Swiren: We certainly do not object to the substitution of a copy, for the bulky framed instrument.

Trial Examiner Dudley: No, you did not object at that time.

Mr. Swiren: Very well, then.

1163 Trial Examiner Dudley: The copy may be admitted in evidence. I think the exhibit number is Board's Exhibit 16.

(The copy referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 16.")

Mr. Walsh: Mr. Harris. Will you swear the witness, if the Examiner please.

JOHN FAY HARRIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Walsh.) Will you state your full name, please.

A. John Fay Harris.

Q. Where do you live, Mr. Harris?

A. 49 June Terrace, Lake Forest, Illinois.

Q. (By Mr. Swiren.) Is the name Harris?

A. Harris.

Q. (By Mr. Walsh.) What is your business?

A. I am superintendent of the Veterans' Relief, for Lake County.

Q. Mr. Harris, during the month of March, did you make any efforts toward composing the differences between the Fansteel Metallurgical Corporation and its employees?

A. I did.

Q. Will you tell the Examiner what efforts you made?

A. I dictated a letter to my stenographer, making  
1164 certain offerings, which were acceptable to the strikers, in an effort to get the strikers and the Fansteel Metallurgical Company together, to see if they could not solve their differences over an arbitration table?

Q. Did you send that letter to the Fansteel Company?

A. I did.

Q. What reply did you receive from them?

A. I received no reply.

Mr. Walsh: Mr. Reporter, will you mark this document Board's Exhibit 29 for identification please.

(The document referred to was marked "Board's Exhibit No. 29", for identification.)

Mr. Walsh: If the Examiner please, I will read what has just been marked Board's Exhibit No. 29 for identification.

Mr. Keele: Just a moment.

Mr. Swiren: We object.

Mr. Keele: We object to the reading of it at this time.

Mr. Swiren: We do not want the letter read until we have had an opportunity to be heard. You are offering the letter in evidence, and we have never heard of the letter before; and there are other matters in connection with the subject matter of the offer that ought to be considered by the Examiner before it is admitted.

Mr. Walsh: I will offer it and let the Examiner rule 1165 on the objection.

Mr. Swiren: All right. We would like to ask a question or two of the witness before we make our complete objection to the exhibit that is offered.

Mr. Keele: Concerning the exhibit.

Mr. Swiren: Concerning the exhibit, of course.

Trial Examiner Dudley: Let me see it, please.

Mr. Swiren: Yes.

Mr. Walsh: Excuse me!

Mr. Swiren: You are making your offer now, I take it?

Mr. Walsh: Yes.

Mr. Swiren: We would like leave to ask some questions of the witness with respect to the exhibit.

Mr. Keele: That is, not as to its contents, if the Examiner please, but merely with reference to the sending of it.

Trial Examiner Dudley: Just what is it you wish to do, Mr. Keele?

Mr. Keele: We have had no proof of what this man did, and we should like to ask him if he mailed the letter.

Mr. Swiren: And we would like to ask him—

Trial Examiner Dudley: He testified he did.

Mr. Walsh: That he mailed it himself, personally.

Trial Examiner Dudley: What else do you want to ask him?

Mr. Keele: Well, let us find out. His statement of 1166 writing the letter, is one thing, but we did not get the letter, and we would like to find out why we did not get it.



Trial Examiner Dudley: Well,—

The Witness: Would you like me to explain the procedure—

Mr. Keele: Just a moment. I am not addressing you; I am addressing myself to the Examiner.

The Witness: O. K.

Mr. Keele: We would like to know what he did.

Trial Examiner Dudley: Mr. Reporter—

Mr. Keele: To lay the foundation.

Trial Examiner Dudley: Mr. Reporter, can you go back to the opening testimony of the witness about the letter, and read me what he did say?

(The record was read as above recorded.)

Trial Examiner Dudley: Mr. Walsh, do you want to lay a better foundation, as to how he sent it, who put it in the mail, and so forth?

Q. (By Mr. Walsh.) Mr. Harris, did you personally put that letter in the mail?

A. I personally handed the letter to the postmaster in North Chicago, in the presence of three witnesses.

Q. And those witnesses were who?

A. Why, Carl Swanson; Warner—I don't know his first name; and Crump—I don't know his first name.

1167 Possibly, to save all of these legal difficulties, it might be advisable for me to tell just exactly how the letter was handled from the time it was dictated.

Q. All right. Just tell us.

A. The letter was dictated by me to my stenographer, and was handed to me for my signature with the carbon copies still in it—there were two carbon copies. We carried the letter, and the two carbon copies, over here to the courthouse, and had Miss Efinger, Miss Florence Efinger, in the County Court—or in the County Clerk's Office, certify to the fact that they were true and correct carbon copies of the letter. I have a copy in my files, and a copy was given to Roy Swanson, and the original letter was placed in an envelope by me, and carried by me down to North Chicago, and handed to the postmaster in North Chicago at about a quarter to three on the day the letter was written; and we were advised that the letter would reach the Fansteel office not later than 3:15.

Whether that letter ever reached there or not, is a matter for the postal authorities to determine.

Mr. Walsh: I offer the letter in evidence.

Mr. Swiren: We object.

Mr. Keele: It still is not sufficient.

Mr. Swiren: There is an additional ground.

Mr. Keele: He has not shown whether he stamped the letter; he has not shown where he handed it to the postmaster, or what the postmaster did with it after it was handed to him. He might have met the postmaster anywhere, and handed him a lot of things. We are making serious inquiry because the letter has not reached us, and we will present testimony to that effect.

Mr. Swiren: There are additional grounds also, if the Examiner please. This man writes a letter and says that he offers his services as mediator. That does not have any pertinency at all. He is not purporting to act for either of the parties. The fact of whether this man, or any other man, seeks to interject himself into a situation of this sort as a mediator, certainly does not have any pertinency to the issues in this case.

Trial Examiner Dudley: Well, now—

Mr. Swiren: And furthermore—pardon me, your Honor?

Trial Examiner Dudley: I will admit the letter, and the attorneys for respondent may ask such questions as they wish on cross examination, about stamping, addressing, where the postmaster was at the time it was handed to him, and such matters.

(The document referred to was received in evidence, and marked "BOARD'S EXHIBIT 29", Witness Harris.)

Mr. Walsh: I will read, Mr. Harris, the entire letter, Board's Exhibit No. 29, now admitted in evidence.

"March 18, 1937"—

1169 Mr. Swiren: Just a moment. What is the purpose of reading it, counsel, may I inquire, if the letter has now been received in evidence.

Mr. Walsh: Well,—

The Witness: It is a matter of actual fact, as to what became of the letter.

Mr. Swiren: Just a moment.

The Witness: I wrote the letter that he is going to read.

Mr. Swiren: Just a moment, Mr. Witness. When we address counsel, or the Examiner, we would prefer not to get a reply from you.

Trial Examiner Dudley: Do you object to counsel reading the letter, Mr. Swiren?

Mr. Swiren: Yes. I do not know what the purpose is. If he will tell us what the purpose is, perhaps we will not object.

Mr. Walsh: Well, I presume I ought to tell counsel—

Mr. Swiren: If you read all of the exhibits, after they have been received, you will just be encumbering the record.

Mr. Walsh: Well, if you object, since the Examiner has admitted it in evidence, we will just waive the reading of it.

Mr. Keele: Just a moment.

1170 The Witness: Well, I believe I am entitled—

Mr. Keele: We will withdraw the objection.

Mr. Swiren: Yes, we will withdraw the objection, Mr. Examiner.

The Witness: I think I am entitled to have the letter read.

Mr. Swiren: We withdraw the objection, if the Examiner please.

Mr. Keele: We have just learned of the gentleman's disability, so we will withdraw the objection, without a speech.

1171 Mr. Walsh: The letter is as follows:

"March 18th, 1937.

"Fansteel Metallurgical Corporation,  
North Chicago, Illinois.

Attention of Mr. R. J. Aitchison.

Dear Sir:

"A properly authorized group of members of Local #66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, have requested me, in the best interest of all concerned, to present the following requests to you, for your consideration.

"No. 1 The recognition of Lodge No. 66 Amalgamated Association of Iron, Steel and Tin Workers of North America, as the bargaining agency for its members.

"No. 2 That no discrimination be shown to any member of the above mentioned organization, who has participated in any way in the dispute between the above mentioned organization, and the Fansteel Corporation.

"No. 3 That the Fansteel Corporation select a committee of its own choosing, to meet with a committee selected by Local No. 66 Amalgamated Association of Iron, Steel and Tin Workers of North America, of its members who have been employed by the Fansteel Corporation to discuss and arbitrate mutual differences.

"If a favorable answer is received to the above requests by 5 p. m. Monday, March 22nd, 1937, or at any time prior to that time, Local No. 66 Amalgamated As-

sociation of Iron, Steel and Tin Workers of North America, agree to remove all pickets from the vicinity of the Fansteel Corporation, providing that during the period of negotiations, the Fansteel Corporation agrees not to hire any new employees for any purpose whatever.

"My office in this matter is that of mediator, whose desire is to bring together the two parties concerned in this dispute, so that no undue hardship shall be worked upon either of the parties concerned, or the state and nation.

Respectfully yours,

John F. Harris,  
*Superintendent."*

Then at the bottom of the letter it says:

"State of Illinois, }  
County of Cook. } ss.

"I, Florence Efinger, notary public in and for Lake County, Illinois, hereby certify the foregoing to be a true and perfect carbon copy of an original letter, signed by John F. Harris, Superintendent, Lake County Veterans Relief Commission, dated March 18, 1937, and addressed to Fansteel Metallurgical Corporation, North Chicago, Illinois, attention Mr. R. J. Aitchison.

"In witness whereof I hereunto set my hand and notarial seal at Waukegan, Illinois, this 18th day of March, 1937.

1173

"Florence Efinger  
"Notary Public."

Q. (By Mr. Walsh) Is that the letter which you have just described to us, Mr. Harris?

A. To the best of my memory, it is. I have my copy in my files, and if it is necessary, it can be checked word for word with inat; but I am satisfied that this is the letter that I wrote.

Mr. Walsh: All right. You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren) Mr. Harris, you stated that you are superintendent of Veterans Relief in Lake County.

A. That is correct.

Q. Is that a public office that you hold?

A. It is.

Q. Under what governmental subdivision, or division?

A. My particular office—

Q. Is it a county office?

A. My particular office is an office ordained or prescribed by the statutes of the State of Illinois, and maintained by the County of Lake for the purpose of administering relief to indigent veterans, in the County of Lake.

Q. I see. In connections with the subject matter of your letter, you were desirous of being helpful if you could as a mediator between the parties; is that right?

1174 A. My first and immediate concern was an effort to preclude the possibility—or I will change that from “possibility”, because it had already commenced; but my first concern was to obviate the necessity of any number of veterans who would legally be entitled to relief, having to obtain relief from public funds, when they possibly might be working, and supporting themselves.

Q. And that thought occurred to you about the 18th of March, when you sent that letter; is that right?

A. No, sir, that thought had occurred to me before the 18th of March.

Q. Well, did it occur to you during the period from February 17th to February the 26th, shall we say?

A. It did not.

Q. Who asked you to communicate with the Fansteel Metallurgical Corporation?

A. It was my own personal idea.

Q. And in execution of that idea, did you get in touch with someone at the company before you prepared that letter?

A. I did not.

Q. Did you get in touch with someone representing the men who had seized the plant of the Fansteel Company and held it against court orders, and been discharged by reason of that conduct?

A. I had no knowledge, definite or otherwise, as to 1175 the charges concerning these men; but there were a certain number of individuals, veterans here, who had been employed in Fansteel, and, according to the best newspaper and radio knowledge obtainable, had been discharged, who were compelled to apply for relief, through my office.

Q. I see.

A. (Continuing) It was necessary for me to administer the relief; and in the full conception of my duties as superin-

tendent of relief, I am doing a much better job by keeping men off relief, by keeping them in private employment, occupied, than I am in merely handing out groceries.

Q. Now, that same source of information, the newspapers, and also the other source of information which you mentioned, the radio, also conveyed to you information as to the activities of these men which led up to their discharge, did they not?

A. Absolutely.

Q. Yes.

A. Absolutely.

Q. And then you communicated with some of the men; is that right?

A. I did not.

Q. Well—

A. Not directly, that is, in the sense that you are trying to suggest.

1176 Q. Well, in any way.

A. The men came to my office, to apply for relief.

Q. All right. Who came there?

A. I cannot give you the names of men who are veterans, because the statutes of the State of Illinois preclude the possibility of the names of veterans who are obliged to obtain public relief, being mentioned.

Q. Well, did you talk to anyone with respect to the position of those men, before you outlined what you thought their position was in your letter of March 18th?

A. Please explain what you are driving at.

Mr. Swiren: Read him the question please, Mr. Reporter. (The question was read.)

The Witness: I would like to have a clearer definition of what you mean by "the position".

Q. (By Mr. Swiren) You outlined what you thought the position of the men who had been discharged, was, did you not?

A. I didn't make any outline, no. Nothing in my letter said that there was any outline as to what their position was.

Q. You said that Lodge 66, or that some group had agreed to certain things, and asked you to pass them on to the Fansteel Metallurgical Corporation for its consideration; that is right, is it not?

A. As far as the "group" is concerned, that is correct.

1177 Q. That is right.



A. A group.

Q. Tell us who was in the group that came to you and asked you to pass on that information?

A. On the basis of the same answer that I had to give you before, I cannot give you the names of the group.

Q. I am not asking you who got relief. I am asking you who made the request.

A. (No answer.)

Mr. Swiren: I ask that the Examiner instruct the witness to answer the question.

Q. (By Trial Examiner Dudley) Do you remember who it was?

A. Yes, Mr. Examiner, I remember definitely who it was, but by the same token, I could not say that there were six or seven men who came up to ask this, and that one man, mentioning his name, did not get any relief.

Mr. Swiren: I did not ask you about who got relief, and I am not interested in relief. I am interested only in the question that I have asked.

Mr. Walsh: Well now, I think—

Mr. Swiren: Does the witness still refuse to answer the question?

Mr. Keele: If this man refuses to testify and tell the whole truth, then I think all of his testimony ought to be stricken from the record.

1178 Mr. Swiren: We are certainly entitled to have the question answered, and I now ask that the witness be instructed to answer the question.

Trial Examiner Dudley: I do not see that it is very pertinent to the inquiry.

Mr. Swiren: Oh, yes, it certainly is. Here is a man who injects himself into this situation, and we are entitled to know how, why, and by whose authority.

The Witness: I will answer the question: to the best of my knowledge—

Mr. Swiren: Now, let us not have any speech, Mr. Witness. I have made a request of the Examiner. I am not addressing myself to you.

Mr. Keele: He can get the absolution that the Act gives him, you know.

Trial Examiner Dudley: Read the question, please, Mr. Reporter:

(The question was read.)

A. I stated that nobody came and asked me to pass on this information.

Mr. Swiren: Just a moment. I am addressing my remarks to the Examiner.

The Witness: Well, he is reading the question to me. The Examiner told me to answer the question, and he is reading the question to me. Is there any objection to that?

1179 Trial Examiner Dudley: Just a moment. Does the letter show the authority to speak for the union?

Mr. Swiren: He says a group came to him, and asked him—

Mr. Keele: A properly authorized group.

Mr. Swiren: "A properly authorized group of members of Local No. 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, have requested me, in the best interest of all concerned, to present the following request to you for your consideration."

I persist in my motion that the entire testimony of the witness, and the exhibit that he has identified, be stricken from the record.

*Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley) Mr. Harris, in your letter you indicate three points which the corporation should, on your suggestion, accede to; namely, recognition of the union; no discrimination against the union; and also the selection and meeting of certain committees; and then you state that if you receive a favorable answer by Monday, March 22nd, then the union, or Lodge 66, will remove all pickets from the vicinity of the corporation; which brings up your authority to make a definite statement; and the question of your authority might well have been in the mind of the corporation, if and when it received your letter, and made its representatives wonder as to whether or not they could rely on it.

1180 The Witness: Mr. Examiner, would it be possible to explain the situation off the record, and then put it on the record if you see fit to do so, as to just exactly how this whole proposition of my entering into the picture, arose, and the concessions I got from the men, in order to have something that we believed the company would be willing to consider, and use as a basis for further negotiations?

Trial Examiner Dudley: Well—

Mr. Swiren: Oh, no; we object to any testimony off the record.

Trial Examiner Dudley: I think—

Mr. Swiren: Here is a simple question, requiring a simple answer.

Q. (By Trial Examiner Dudley) Mr. Harris, did you not talk, after you began your negotiations, with quite a number of the members of the union?

A. Yes, sir.

Q. Covering these veterans?

A. Yes, sir, I said, six or seven, and as I recall it, I can only recall the name of one who was not a veteran.

Q. You see, as a mediator, you are interested more in bringing together the employer and the employees, and although your impetus in starting might have been motivated by your interest in the veterans, nevertheless, once you got started, and apparently discussed it with the union, then  
1181 your effort was to bring together the employer and the union members whether they were veterans or not.

A. That is true.

Q. So in telling us who the members or who the officials of the union were, whom you contacted, would not indicate at all what men were veterans, or what men applied for relief.

A. Well, as near as I can recall it—well, I will accept the responsibility of placing the veterans' names in the record.

Q. You need not indicate those who were veterans, or those who were applying for relief.

A. There is no indication, then, as to whether they are veterans or not?

Q. No.

A. As near as I can recollect, there was Crump—I don't know his first name; Warner; and—I don't recall the names of the rest of the men. There were on several occasions as many as six or seven in the groups that came up to the office to discuss whether or not a letter such as this would have any effect.

Q. And did those men whom you have named, and other men associated with them, authorize you to state that the union would remove pickets from the vicinity of the plant if a favorable reply was received to your letter?

A. The original draft of that letter was carried back  
1182 to the union as a group for discussion and approval, and the three men concerned carried the letter back and

notified me that it had been acceptable to Local No. 66, and that they wished me to write this letter.

It was not that I had any personal desire of acting as a mediator. My function in the matter was purely to attempt to bring the strikers and the management together, so that they could make an attempt to adjust their differences.

Trial Examiner Dudley: Yes, I understand that. Is that what you wanted to find out, Mr. Swiren?

Mr. Swiren: That is part of the information, but I would like to get some other information.

Trial Examiner Dudley: All right. You may proceed.

*Cross-Examination (Continued).*

Q. (By Mr. Swiren) Do I understand then, Mr. Harris, that you were not undertaking to act as the representative of these men?

A. I most certainly was not.

Q. You were offering your services as a mediator; is that right?

A. As a mediator to the extent of attempting to get the two factions together, so that they could work out any proposals that might be mutually satisfactory, to get these men off of the relief rolls, and keep others from going onto the relief rolls.

1183 Q. Did the Fansteel Metallurgical Corporation, or any of its officers, ask you to serve as mediator?

A. No.

Q. Did you make any calls on the officers of the Fansteel Metallurgical Corporation?

A. I did not.

Q. Personally?

A. I did not.

Q. Did you talk to any of them?

A. No.

Q. Are you familiar with the positions of mediator and conciliator in the Department of Labor of the State of Illinois?

A. It is probably unfortunate that I used the word "mediator" in the letter at the time.

Q. No, no. Just answer the question, please.

A. Yes; that is, I have a broad definite knowledge—  
1184 Mr. Swiren: I ask the witness be instructed to answer my question, and not give me all of his views.

The Witness: Ask your question again.

Mr. Swiren: Read it, please.

(The question was read.)

A. Vaguely.

Q. (By Mr. Swiren) You have also heard that the United States Department of Labor maintains a department of mediation, have you not?

A. I have.

Q. Had you read anything in any of the newspapers, or had you heard over the radio, or both, to the effect that the federal and state departments had mediators and conciliators trying to work out the difficulties that arose when a group of those men seized two buildings of the Fansteel plant?

A. Yes, I heard that.

Q. And it was your thought that where they had failed, you might succeed in effecting mediation; is that correct?

A. Substantially.

Q. And on that basis, you tendered your services; is that right?

A. That is substantially correct.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all, Mr. Harris; 1185 thank you very much.

(Witness excused.)

Mr. Walsh: May I suggest a short recess at this time, if the Examiner please.

Trial Examiner Dudley: I will declare a short recess at this time.

(Thereupon a short recess was taken.)

Trial Examiner Dudley: The hearing will reconvene.

Mr. Walsh: I will recall Mr. W. D. Crump. This witness has already testified, if the Examiner please.

Trial Examiner Dudley: Which Crump is this?

Mr. Walsh: W. D. Crump.

W. D. CRUMP, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Crump, were you with Mr. Harris, Mr. Swanson, and Mr. Warner at the time the letter which has been introduced in evidence here as Board's exhibit No. 29, was delivered to the post master?

A. Yes, sir, I was.

Q. Will you explain that situation to the Examiner?

A. We had the letter—after it was notarized downstairs, Mr. Harris sealed it in an envelope, and it was taken to the post office; and we asked the post master—if I remember 1186 right, this was on a Friday, and that was the reason for wanting to get it in there that day, because the next morning was Saturday, and maybe Mr. Aitchison would not be there—we asked the postmaster if it would be delivered that day, as a registered letter; and there was a discussion at that time; and I believe the postmaster told us that if we put a special delivery stamp on it, it would be taken down and received by a quarter after three that afternoon.

So Mr. Harris turned it over to the postmaster, and the stamps were put on it, and we left. At that time it was about a quarter to three, or ten minutes to three.

Q. All right.

A. And he said that it would be delivered there in half an hour.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Block) Mr. Crump, where was this post office, in which you and Mr. Harris were?

A. At North Chicago.

Q. (Continuing) The day you had this discussion about special delivery—where was it?

A. The post office?

Q. Yes.

A. North Chicago.

Q. Where is the plant of the Fansteel Company located?



1187 A. 22nd Street.

Q. How far from that post office?

A. Oh, maybe half a mile or so.

Q. It is less than that, is it not?

A. No, sir, I don't believe so.

Q. This was what time of the day?

A. Oh, between a quarter of three, and ten minutes to three, it went into the post office.

Q. No effort was made to deliver that letter to the Fansteel office, was there?

A. In person?

Q. Yes.

A. No.

Q. No one suggested that?

A. No. At the time we—

Q. I say, no one suggested that?

A. No—well, we talked it over, that we had better send it through the mail as a registered letter, registered mail, to show the receipt at the other end.

Q. You first took that letter up to the county clerk's office in Waukegan, as I understand you?

A. Yes, sir.

Q. That is how many miles from the office of the Fansteel Metallurgical Corporation?

A. About 3 miles.

1188 Q. About 3 miles.

A. Yes, sir.

Q. Well, then, when you finished your work there, you took it back to North Chicago?

A. Yes, sir.

Q. And you took it within half a mile of the office of the Fansteel Company?

A. Yes, sir.

Q. Mr. Harris was with you, was he?

A. Yes, sir.

Q. And there you had some discussion with the postmaster?

A. Yes.

Q. About the length of time that it would take to deliver that letter, if it were mailed by special delivery?

A. Well—

Q. Is that correct?

A. Only in regard to whether it would be better to send it special delivery or as registered mail.

Q. That is what I say.

A. Yes, sir.

Q. That was the discussion?

A. Yes, sir. The reason of the discussion was—

Q. Well—

A. —as to the time—

Q. Just a moment. Let us finish the other question  
1189 first. You did have some discussion there?

A. Yes, sir, but the only discussion was, if we registered that letter, as to the time that it would take to be received at the Fansteel office, or if we sent it special delivery, would it be received that day; because we wanted that letter to get in there that day.

Q. Yes.

A. That was the discussion.

Q. You wanted to be sure that it was delivered that day.

A. Yes.

Q. And you were within a half a mile, or even less than that, from the building in question?

A. Yes.

Q. That is, the office of the Fansteel Company, at the time?

A. Yes, sir.

Q. And you had Mr. Harris with you?

A. Yes, sir.

Q. But it was not delivered there?

A. No, sir.

Mr. Block: That is all.

Mr. Walsh: That is all.

Q. (By Trial Examiner Dudley) How was it sent; special delivery?

A. Special delivery, as far as I recollect.

1190 Q. Was it stamped?

A. Yes, sir, the postmaster took care of that.

Trial Examiner Dudley: That is all.

(Witness excused.)

Mr. Walsh: Charles Warner, take the stand, please.

Trial Examiner Dudley: Have you been sworn?

Mr. Warner: No, sir.

CHARLES WARNER called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Charles Warner?

The Witness: Yes, sir.

Q. (By Mr. Collins) Were you just served with a subpoena to appear before the Examiner this afternoon in this proceeding?

A. Yes, sir.

Mr. Collins: On behalf of the witness, if the Examiner please, I would like to claim his exemption under Section 11, Paragraph 3 of the National Labor Relations Act. That is, I would like to claim his privilege.

Trial Examiner Dudley: The privilege allowed by the Act, is granted.

*Direct Examination.*

Q. (By Mr. Walsh) Mr. Warner, state your address, please.

A. Waukegan, Illinois, Rural Route No. 2.

Q. Were you in court when we were discussing this letter that Mr. Harris wrote?

1191 A. I was.

Q. Which has been identified here as Board's exhibit No. 29.

A. Yes, sir.

Q. Were you present when that letter was mailed?

A. I was.

Q. Will you just tell the Trial Examiner the circumstances surrounding the mailing of that letter?

A. After the letter was dictated and put in the envelope, we brought it to the court house, and had it certified by a notary public—the copies, that is, that they were true copies; and we took the letter then from the court house to the post office in North Chicago, and took it to the postmaster, Mr. Woodward, and told him what it was; and as I recollect it, he stamped it and told us that it would arrive at the Fansteel Products Company—or Fansteel Metallurgical Corporation, about a quarter after three.

That was about three o'clock, when we brought it in there to him.

Q. Do you recall how the letter was sent; that is, what class of postage?

A. It was special delivery, as near as I can recall it at this time.

Mr. Walsh: All right. You may inquire.

Mr. Block: No questions.

Mr. Walsh: That is all; thank you.

1192 (Witness excused.)

Mr. Walsh: Frank Latz. This witness has already been sworn, if the Examiner please, but he had not received his subpoena before.

FRANK LATZ, recalled as a witness for the National Labor Relations Board, being previously sworn, testified further as follows:

Mr. Collins: Mr. Latz, since you were here before, you have received a subpoena, have you?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, if the Examiner please, I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

*Direct Examination.*

Q. (By Mr. Walsh.) Mr. Latz, were you a member of the committee that called upon the management of the Fansteel Company on March 3rd?

A. I was.

Q. Will you tell the Examiner just what happened at that meeting?

A. At the time we got there?

Q. Just tell us all about it.

1193 A. We come into the office, and Carl asked the girl there—

Mr. Swiren: Talk a little louder, please.

A. (Continuing) Carl asked the girl there if we could see Mr. Aitchison, and the girl told him to wait a few moments; and then she sent us upstairs to his room, to his office, his private office up there.

Q. (By Mr. Walsh.) Who was with Mr. Aitchison when you got up there in his private office, if anyone?

A. Anselm and Driggs.

Q. And did the committee present a proposal at that time?

A. It did.

Q. And the proposal was in writing, was it?

A. It was.

Q. Was that proposal discussed between the committee and the representatives of the company?

A. I don't think it was.

Q. Did you later receive a reply from the company in writing?

A. We did.

Q. I will hand you what has been marked Board's exhibit No. 26, and ask you if that is the reply which you received to that proposal?

A. Yes, sir, it is the same.

Q. I did not hear. Is that the reply you received?

A. Yes, sir.

1194 Q. Did you later have another meeting with the company?

A. We did.

Q. Upon what date was that?

A. I think that was about the—a few days after the 1st.

Q. About March 5th, was it not?

A. About that.

Q. Did you submit a proposal to them at that time?

A. Yes, sir.

Q. Was that in writing?

A. Yes, sir.

Q. I will hand you what has been marked as Board's exhibit No. 27 here and ask you if that is a stenographic transcript of what happened at that meeting?

A. That seems to be about everything that was said there, yes, sir.

Mr. Keele: What is the answer?

Mr. Walsh: He says that seems to be about everything.

The Witness: That seems to be about everything that was said there.

Q. (By Mr. Walsh.) Then you received a reply from the company?

A. Yes, sir.

Q. I will hand you Board's exhibit No. 28 and ask you if that is the reply which you received. Is that the reply?

510 *Witnesses for National Labor Relations Board.*

1195 A. Yes, sir.

Q. Do you happen to have any copy of the proposal which you submitted to the company at that time?

A. No, sir.

Mr. Walsh: You may inquire.

Mr. Keele: No cross.

Trial Examiner Dudley: That is all; thank you.  
(Witness excused.)

Mr. Walsh: Off the record if the Examiner please.

Trial Examiner Dudley: Off the record.

(Discussion off the record.)

Trial Examiner Dudley: Let the record show that the hearing is adjourned at this time, to reconvene tomorrow morning at 9:30 in this court room.

(Whereupon, at 3:30 o'clock p. m., of Tuesday, June 15th, 1937, the hearing was adjourned to Wednesday, June 16th, 1937, at the hour of 9:30 o'clock a. m. in the court room of the Lake County Circuit Court, County Court House, Waukegan, Illinois.)

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*Proceedings Before National Labor Relations Board. 511*

1201      BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• •      (Caption—XIII-C-80)      • •

Circuit Court Room, County Building,  
Waukegan, Illinois,  
Wednesday, June 16, 1937.

The above-entitled matter came on for further hearing pursuant to adjournment, at 9:30 o'clock A. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, by Max Swiren, and Harold M. Keele, Suite 2525, One North LaSalle Street, Chicago, Illinois; and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of N. A.

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1202      PROCEEDINGS.

Trial Examiner Dudley: The hearing will reconvene. Let us come to order.

Mr. Walsh: At this point, Mr. Examiner, I desire to withdraw what has been introduced as Board's Exhibit No. 23, and substitute a copy.

Trial Examiner Dudley: Leave is granted.

(The document previously marked "Board's Exhibit No. 23", was thereupon withdrawn, and a copy substituted therefor, marked "Board's Exhibit No. 23.")

Mr. Walsh: I now desire to offer in evidence the constitution, by-laws and declaration of principles of the National Metal Trades Association, which will be marked for identification as Board's Exhibit No. 30.

(The document referred to was marked "Board's Exhibit No. 30", for identification.)

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: We object to the offer of the by-laws on the ground first that there is no verification of the authenticity of the pamphlet counsel is offering.

Second, the president of the respondent company testified that he had not read, and is not familiar with the contents of that instrument. There is no basis therefore, for making it binding upon the respondent.

1203 In fact, the testimony of the respondent's president is that the determination and settlement of its problems rested with the management, and were not controlled, and would not be controlled by the National Metal Trades Association.

Third, even if it were binding, it has no materiality to the issues in this case, which, as we conceive them, involve the question of whether the company did or did not bargain collectively, conduct itself in accordance with the provisions of the Act, and whether or not the men alleged to have been discharged for union membership were so discharged.

I cannot see that the constitution of that Association has any materiality. I would like to know too, whether it is claimed that membership in the Association is, in and of itself, a violation of the National Labor Relations Act?

Trial Examiner Dudley: Mr. Reporter, may I see the proposed exhibit?

The Reporter: Yes, your Honor. (Handing document to the Trial Examiner.)

Trial Examiner Dudley: Mr. Walsh, is this what Mr. Abbott has delivered pursuant to his promise on the witness stand?

Mr. Walsh: Yes. They mailed it to me. I received it last night.

Trial Examiner Dudley: I will overrule the objection and admit the exhibit as testimony subject to verification.

1204 (The document referred to was received in evidence, and marked "BOARD'S EXHIBIT NO. 30".)

Trial Examiner Dudley: You may proceed.

Mr. Walsh: At the time of adjournment, yesterday, I was about to proceed with proof as to paragraph eleven, of the complaint. At that time I asked that the hearing be adjourned in order that I might segregate these men into certain groups, that they might better be classified.

However, after studying the problem, I am very much afraid there is no basis upon which we can stipulate. Therefore, I will have to call each one of these men individually.

Trial Examiner Dudley: Very well. You may proceed.

Mr. Walsh: Steve Ark.

STEVE ARK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Steve Ark?

A. Yes, sir.

Q. You were subpoenaed to appear here before the Examiner today?

A. Yes.

Mr. Collins: Mr. Examiner, on behalf of the witness, I would like to claim his constitutional privilege under Paragraph 11, Section 3, of the National Labor Relations Act.

1205 Trial Examiner Dudley: The privilege is granted to the witness.

Q. (By Mr. Walsh.) What is your address, Mr. Ark?

A. 1120 Park Avenue, North Chicago.

Q. You have been employed 13 years by the Fansteel Metallurgical Corporation?

A. Well, nearly 13; not quite.

Q. What jobs did you have down there?

A. What was that?

Q. What was your job? Were you in the chemical department?

A. Chemical department, yes.

Q. When did you join the union?

A. In July, 1936.

Q. When did you get your last pay from the company?

A. On March 5th.

Q. 1937?

A. 1937.

Q. Did the company take up your pass?

A. Yes.

Q. They took up your pass the same day?

A. The same day.

Q. Is that right?

A. Yes.

Q. Was that at the plant?

1206 A. At the plant, when I got my check; the pay clerk took it.

Q. The pay clerk took it?

A. Yes, when he handed me my check.

Q. Did they offer to take you back?

A. No.

Mr. Swiren: That is objected to. I would like to be heard on that. It opens up a new line of inquiry now, his being asked about reinstatement.

There is no evidence of the discharge of this man. Until there is some showing of that, there is no problem of reinstatement. We take it, from the complaint, that the charge is that this man, and some of the others, were discharged because of membership in the union, and that thereafter they were not reinstated because of membership in the union.

Until there is a showing of improper discharge, there cannot be any basis for improper reinstatement, or failure to reinstate.

If this man was properly discharged, there is no possible ground on which a complaint could be made of failure to offer him a new job. I think the Board has the burden of showing first the discharge of this man, and thereafter, establishing, if it can, the basis of the discharge, and attempting to show it was a violation of the Act.

1207 Until that occurs, there is no problem of reinstatement of any kind.

Trial Examiner Dudley: I have not read your exhibits, but I got the impression from what you said when you introduced them, Mr. Swiren, that they at least had something to do with the events between February 17th and February 27th, 1937—

Mr. Swiren: That is right.

Trial Examiner Dudley: —and perhaps the discharge of the employees.

Mr. Swiren: If the government is relying upon our exhibits, then the Examiner will find that these men were discharged for taking over the plant and holding it, which of course is not authorized by the National Labor Relations Act or any other act as far as I know.

Trial Examiner Dudley: Do your exhibits show these men were discharged for that reason?

Mr. Swiren: They show the discharge of all of the men who occupied the buildings. Unless this man shows he was in the building, he would not come within that finding.

Trial Examiner Dudley: Do they likewise name the people whom the Circuit Court—

Mr. Swiren: The people named are the people who vio-

lated the injunction. We will get those, if the Examiner will bear with us for just a moment.

1208 Trial Examiner Dudley: Of course, Mr. Swiren, in your answer you do state that you discharged certain employees by reason of their alleged seizure of those buildings, and then you have gone ahead and stated your reasons for failing to offer to reinstate them.

Mr. Swiren: We are not required, as a matter of law, to take anybody back or make any offer to take anybody back who was discharged properly. We have covered the facts. We are not required to state the law in our answer. We are replying to the facts.

Mr. Walsh: As a matter of fact, the answer admits the discharge of all persons named in Paragraph 8, who are the same persons with the exception of two—

Mr. Swiren: Where is that? The only persons named in Paragraph 8 that were discharged, were the men in the building. If these men want to identify themselves as being participants, they will come within that paragraph.

Then the question to be determined by this Examiner is whether there was an improper discharge.

Trial Examiner Dudley: Are you referring to Paragraph 7?

Mr. Swiren: Yes. Even if we had admitted a discharge for proper purposes, that would still not excuse the Board from its obligation of showing an illegal discharge before it can go into the question of reinstatement.

Mr. Walsh: Well, of course we have a fundamental difference there, Mr. Swiren. It is not necessary to show any discharge, so long as the work of the employee had ceased in connection with the current labor dispute.

I think the evidence is sufficient in the record now to establish that there was a current labor dispute.

Mr. Swiren: The evidence shows that they engaged in the seizure of the plant, which is not my conception of a labor dispute. That is my conception of lawlessness, and the court has so held.

Mr. Walsh: Well your conception of a current labor dispute and the Board's are two different things.

Mr. Swiren: I do not know of anything in the law that says that the seizure of a plant constitutes a labor dispute. Here are the original decrees and orders that were offered in evidence, and if the Examiner will bear with me, I will read the findings.

That is the only thing I know of so far—

Trial Examiner Dudley: Mr. Swiren, this can be approached by testimony of the witnesses to the effect that the company was not operating during a certain period, and they did not work during a certain period,—

Mr. Swiren: I know, but—

Trial Examiner Dudley: (Continuing) —their last pay amounted to so much and that they were not offered a position after that.

1210 I think that way, you would at least be able to get it in.

Mr. Swiren: No. I think the record has to be in one of two forms. They must either try to prove a discharge of the man if he was in the employ of the company, and then it is a question of discharge; or if he was discharged as they claim in their complaint, Paragraph 11, and there was a failure to reinstate, they can rely on that.

But they cannot shift from one to the other. They cannot shift into the reinstatement without showing a discharge.

Trial Examiner Dudley: Oh, yes.

Mr. Swiren: There cannot be any question of reinstatement before a man is let out.

Trial Examiner Dudley: Well, you can have a question of discrimination as to discharge or reinstatement, after a strike, a lockout, or a close-down on account of lack of business.

Mr. Swiren: I think the question arises first as to the man's discharge. I think they must show a discharge before there can be any claim that the man should have been taken back for any reason.

Trial Examiner Dudley: I think the Act, and the decisions of the Board, are clear that there can be discrimination in re-employment, regardless of the cause of severance of the employment.

1211 A man merely may have been laid off due to lack of work.

Mr. Swiren: I think that is exactly the point. Let us find out how the man left the employment of the company. That is a vital element to the question of whether he should come back to work, or whether he should have been taken back to work.

Trial Examiner Dudley: There can be discrimination, if the facts so prove.

Mr. Swiren: The facts, so far—



Trial Examiner Dudley: I think the complaint has set them up sufficiently.

Mr. Swiren: They are making two different charges. One ties into the other, necessarily. The only evidence before this Examiner at the present time is that there was a discharge of men for seizing the plant, and not a discharge for engaging in any activity permitted by the Act.

Trial Examiner Dudley: Mr. Walsh could be seeking to prove now Paragraph 11 of the complaint, and Paragraph 8 of the complaint.

Mr. Keele: The most important point, I think, is this: The very word "reinstatement" in itself implies a discharge, does it not?

As a matter of logic, there must be a discharge before there can be a reinstatement.

1212 Mr. Walsh: That is not true.

Mr. Keele: How can a man be reinstated if he has never been discharged?

Mr. Swiren: That is the only evidence before this court, (handing document to the Trial Examiner), except this other order which contains similar language.

Mr. Walsh: There can be a lay-off, or a stopping of work. You do not have to have a discharge. The word "discharge" has a very definite connotation in this particular field. A lay-off is one thing, and a discharge is another thing.

There can be a failure to reinstate after a lay-off.

Mr. Keele: I do not see how the courts can get around this point: The logic of it is that before there is a reinstatement there must be a discharge. The word "reinstatement" is a simple word which Webster defines clearly. Before we can get the word "reinstate"—

Mr. Walsh: There must be a condition of employment.

Mr. Swiren: There must be a severing of employment.

Mr. Keele: No. There must be one of two things—

Mr. Walsh: There does not have to be a severing of employment.

Mr. Keele: There has to be one of two things: One is a condition of employment, otherwise you could not use the prefix "re", which means "again".

1213 The second thing is there must be some sort of a termination of the employment, whether you call it a furlough, or anything else. A 99-year furlough would be a very effective discharge. There has to be some sort of a cutting off of that employment, whether you call it a furlough or

something else. We are not concerned with the terminology of it.

Then you come to the question of whether or not the man resumes, because "reinstatement" means "resumption", logically, of employment.

Our contention here is that until such time as you can show an interruption of any such a nature as to show termination of the employment, there cannot be such a thing as a reinstatement.

We are getting the cart before the horse, in starting in on the question of failure to reinstate. There is not any doubt about the fact there can be discrimination in reinstatement, but you have to have something to show there was a termination, and thus far the government has not put in any evidence as to any kind of an interruption.

Mr. Walsh: I believe it is in the evidence.

Trial Examiner Dudley: Mr. Keele, I appreciate your logic, and I think you are right, but I believe that Mr. Walsh should simply ask the witness if the plant was in operation between certain dates, if he worked during that period, and whether he was asked by the company to return to work 1214 after that period.

Mr. Keele: That will not cover it, Mr. Examiner, because there were some people who were not working in the factory. There were certain men who were unable to work in the factory, but who received their pay.

The question is not whether you were doing manual labor. The question is whether your employment was continuous. I might not be working for the law firm for the period of the month of August. I might be on my vacation, but my pay goes on and my employment certainly is not terminated. If the office burns down, or if the office is closed for repairs, my salary continues.

You can call it a furlough if you want to, or you can call it anything else, but that is not a termination. You have a termination, when the activity of production stops, and you do not have a termination otherwise.

Mr. Swiren: And when you return, there is no reinstatement; there is just a continuance.

Trial Examiner Dudley: Pursuant to your suggestion, Mr. Walsh, you might also ask the witness if he was paid during this period the plant was shut down.

Mr. Swiren: They might have owed him money. That does not settle the question. The question is, did he continue

in the employment of the respondent, or was that employment terminated? Unless they show a failure to continue the employment, and thereby show a termination, there cannot be any problem of reinstatement.

Trial Examiner Dudley: I think we will—

Mr. Swiren: I think there is a very determined effort on the part of counsel for the Board to avoid the facts. I think this is a grand opportunity for the Examiner to call on counsel for the Board to bring all the facts before the Board.

Trial Examiner Dudley: Let us hear the evidence and see what it is. Then you can renew your motion.

Mr. Walsh: We want to develop all the facts that are material to the case.

Mr. Swiren: It seems to me that rulings of that kind, taking in everything, and looking at it afterwards may be all right with reference to individual items of evidence, but here we are considering the crux of this whole case, and I do not think the Examiner ought to permit a general field day without confining counsel for the Board to the requirements of the law.

Trial Examiner Dudley: I will admit it subject to your right to renew your motion after the evidence is in.

Mr. Walsh: Where do we stand now?

Mr. Keele: Allow me to say this, if I may, even though the Examiner has ruled: As a matter of orderly procedure, it seems to me counsel for the government ought not be permitted to allow an hiatus of two weeks or three weeks to come into the midst of this case.

He very carefully began with the history of this company, went into what it does, and how it does it. He covered the events leading up to this so-called labor dispute during July, August, September, and on to February.

Then, suddenly, as though there had been a cataclysm, at two o'clock, on the day of February 17th, there is a stopping of all evidence, and we jump over to March 5th.

Now, the contention here is that this is not a question of trying to win a lawsuit. Supposedly this is an endeavor to get the facts before the Trial Examiner, all of the facts. If my conception of the duties of the attorney for the Labor Board is correct, his job is not to try to win a case for the government, but to bring all of the facts out. In other words, the purpose is not merely to defeat the respondent, but to impartially develop all the facts pertinent to this inquiry.

Now, there appears to be a very obvious and patent effort

on the part of counsel to avoid all the facts from two o'clock or two-thirty in the afternoon of February 17th until March 5th, 1937.

Now, those facts must have some pertinency. He has very carefully developed all the facts up until that time. Our contention is that that is the very period during which 1217 the question of the discharge—or furlough, if you please, if he wants to term it that—occurred. We do not believe that it is fair, or that it is orderly procedure—although he has a right to prove his case in his own way—to permit him to jump on into March, on the supposition that he is going to come back and cover that period, which, obviously, he does not want to cover.

Trial Examiner Dudley: I think, Mr. Keele, from what you and Mr. Swiren said, that probably those events can be covered very simply either by Mr. Walsh or by yourselves.

I think perhaps a stipulation, or one bit of testimony would cover the whole thing. I know what you have in mind. I do not think it is very difficult for you to prove it. I do not see that it is necessary to prove it now.

Mr. Walsh: I do not believe it is necessary for me to introduce anything that is not pertinent to the inquiry.

Mr. Swiren: I cannot think of anything more pertinent to the question of reinstatement than the existence of the employment, and the severance of the employment.

Trial Examiner Dudley: Let us admit the evidence, and see what it turns out to be.

Mr. Walsh: Mr. Reporter, will you go back and read everything that the witness has heretofore testified to.

Mr. Swiren: Just a minute, before you do that. If the Examiner please, may this objection be noted with re- 1218 spect to any further testimony by other witnesses. I understand Mr. Walsh has in mind a number of witnesses who will testify along the same line.

We do not want to interrupt the proceeding with repeated objections. We want to note our objection to all such testimony.

Trial Examiner Dudley: I think that is a good idea. Your objection is therefore noted in the record to the testimony of this witness, and all following witnesses who testified along this line.

Mr. Walsh: Now, Mr. Reporter, will you read the witness' testimony?

(The record was read.)

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh.) Mr. Ark, did work stop at the plant on the afternoon of February 17, 1937?

A. Yes.

Q. The plant did not operate during the period from February 17th until February 26th, did it?

A. Yes.

Q. Perhaps you misunderstood me. Were you working during that period?

A. Between the 17th and 26th?

Q. Yes.

A. No.

1219 Q. Now, when the plant started up after February 26th, you went to the plant and got your pay check and they took up your pass, is that right?

A. Well, I didn't get my check right away. I guess the lawyer must have fixed it up we got the checks on the 5th of March.

Q. The 5th of March?

A. Yes.

Q. Have you at any time been offered reinstatement by the company?

A. No.

Q. What did you earn per week just before you stopped work down there?

A. Well, \$27.

Q. How much have you earned since the 17th of February?

A. How much have I earned at other jobs?

Q. Yes.

A. I made \$20 one time. That is all.

Q. Have you had any other work or any other earnings?

A. No.

Mr. Swiren: How much did he say he earned?

Mr. Walsh: \$20.

Mr. Swiren: All right.

Mr. Walsh: You may inquire—no. I have just one more question.

1200 Q. (By Mr. Walsh.) Who did you talk to when you got your pay check?

A. Well, just a girl there at the information place.

Q. All right.

A. I told her my check number and that I wanted my check, and I got my check. The pay clerk brought the check down.

Mr. Walsh: That is all; you may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) What else happened then, when you got your pay check?

A. What happened when I got my pay check?

Q. Yes.

A. I don't remember anything happening then.

Q. Nothing happened?

A. No.

Q. You say that the operation of the plant stopped from February 17th to February 26th, is that right?

A. Yes, sir.

Q. Did the plant superintendent tell you to stop work that day?

A. Pardon?

Q. Did the plant superintendent tell you to stop work on that day?

A. No.

Q. Who told you to stop work?

1221 A. Well, the members of Lodge 66.

Q. The members of Lodge 66 told you to stop work?

A. The committee.

Q. The committee told you to stop work?

A. Yes.

Q. So you stopped? Did you go home then?

A. No.

Q. What did you do?

A. We went into the building, building 3. Some went to building 5.

Q. You held those buildings until the 26th of February, is that right?

A. That is right.

Q. You remained there during that entire period?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did you do any work while you were in there?

A. Did I do any work?

Q. Did you do any production work?

A. No.

Q. Did you want the company to pay you while you were sitting in those buildings?

A. No.



Mr. Walsh: I object to that, your Honor, as not being material to the inquiry here.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: I cannot think of anything more important.

Trial Examiner Dudley: The answer may stand.

Q. (By Mr. Swiren.) By the way, did the sheriff try to get into the buildings while you were in occupancy during the period from February 17th to February 26th?

A. Well, I don't know who was wanting to get in.

Q. You did not let them in, whoever they were, is that right?

A. (No answer.)

Q. Is that right, Mr. Ark?

A. How is that?

Q. You did not let them in, whoever they were?

A. It wasn't only myself.

Q. You and the others together?

A. The whole gang of us, yes.

Q. The sheriff tried pretty hard on the 19th to get in, did he not?

A. I don't know who it was, but somebody tried to come in.

Q. You and the other men who were holding the buildings, Buildings 3 and 5 were involved in the injunction suit in the Circuit Court of Lake County, is that right?

A. I suppose.

Q. Well, you know that, do you not?

1223 A. (No answer.)

Q. You know that is so do you not?

A. Well, sure.

Q. Together, you men held the buildings from the 17th of February until the 26th of February?

A. Yes.

Q. You refused to admit the sheriff or the company into those buildings, is that right?

A. Yes. We was defending our rights.

Trial Examiner Dudley: What was the answer to that last question?

The Witness: Yes, we was defending our rights.

Mr. Block: Perhaps Mr. Walsh will stipulate as to the parties to the Circuit Court suit, and the respondents in that proceeding. I do not know whether this man was one of them or not.

Now, you were one of the parties to that suit, were you not?

Mr. Walsh: He does not know what that means.

Mr. Block: I wonder if that could not be stipulated to, in order to save some time? I wonder if it could not be stipulated that he was one of the parties to the original complaint, and petitions for contempt?

Trial Examiner Dudley: This shows that, does it not?

Mr. Block: It does not show that they are the same 1224 parties.

Trial Examiner Dudley: Does it not list them by name?

Mr. Block: Yes, but it does not show they are the same men. This can be off the record, Mr. Reporter.

Mr. Swiren: Yes. Do not put this on the record.  
(Discussion outside the record.)

Mr. Swiren: Mr. Reporter, take this stipulation. See if it is satisfactory, Mr. Walsh?

Mr. Block: It is stipulated that this witness, Steve Ark, was one of the defendants in the original complaint filed in the suit in the Circuit Court of Lake County No. 37551, entitled "Fansteel Metallurgical Corporation *vs.* Lodge 66, et al."; that he was also one of the respondents in the petitions for contempt that were filed in said cause; that he was one of the men engaged in what has been termed here as a sit-down strike, and the occupancy of either Building 3 or Building 5 during the period from February 17th to February 26th, 1937, and that he was also one of the respondents who was found guilty of contempt of court for violating an injunction entered in the case above referred to, No. 37551."

Mr. Walsh: I do not think I can go that far.

Mr. Block: There is nothing—

Mr. Walsh: I do not think I can go that far, because I do not agree, and I cannot agree to be bound by all the findings of the—

1225 Mr. Block: We are not talking about the findings. This is merely a question of identification. This man is one of the men.

Mr. Walsh: I can go that far. He is one of the defendants in the original case who was found guilty by the Circuit Court of contempt of court.

Mr. Block: The only purpose of the stipulation, in order to save time, is to establish that he was one of the men who was occupying either Building 3 or Building 5 as the case

may be, beginning on February 17th, up to including February 26th, 1937.

Mr. Walsh: That is right; I can go that far.

Mr. Swiren: It is so stipulated, is that correct?

Trial Examiner Dudley: Why do you not do this: Why do you not ask the question "Were you one of the men in Building 3 or Building 5 beginning on February 17th, 1937, to and including February 26th, 1937", and then ask "Are you the same John Smith who was a defendant in the Circuit Court Case"?

Mr. Block: That would be all right, except for the fact that apparently they do not understand the question clearly, and for that reason I think it is perhaps quicker to do it this way.

Trial Examiner Dudley: Well, proceed.

Mr. Swiren: What was the last question?

(The question was read.)

1226 Q. (By Mr. Swiren.) You were one of the respondents in the Circuit Court case that was found guilty of contempt for violating the court's injunction, were you not?

A. Yes; I got ten days and \$100.

Q. Do you expect the company to pay you for the time you have been sitting in jail under that court order?

Mr. Walsh: I object.

Trial Examiner Dudley: That question is not proper.

Mr. Swiren: I will withdraw the question.

Trial Examiner Dudley: Mr. Block mentioned the question of identity. I suppose you have covered that by your last question. That is all right.

Q. (By Mr. Swiren.) You are the same Steve Ark who was named as a defendant and as a respondent to Petitions to show cause in the Circuit Court case we have just talked about, are you not?

A. I am.

Q. Which building were you in during that period?

A. Building 3.

Q. You remained there day and night throughout the entire period from February 17th to February 26th?

A. Yes.

Q. You left the building on February 26th?

A. That is right.

Q. Did you go back to the building in which you ordinarily worked?

A. No; I couldn't get in.

Q. Did you go back?

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A. I couldn't get in, even if I wanted to.

Q. Did you go back?

A. No, I didn't.

Q. Were you willing to return to work on the 26th of February, provided the other men did?

A. Yes.

Q. Were you willing to go back alone?

A. No, not myself, because I wasn't involved myself.

Q. You were not willing to go back to work at that time alone, under any conditions, were you?

A. No.

Mr. Swiren: That is all.

Trial Examiner Dudley: Mr. Ark, what were you doing—

Mr. Swiren: Just a minute, Mr. Ark. Do not leave the stand yet.

Trial Examiner Dudley: I would like to ask you one or two questions.

The Witness: All right.

Q. (By Trial Examiner Dudley.) What were you doing when you earned \$20, which you said you earned since that time?

A. Well, washing walls at Slovenik National Hall.

1228 Q. Was that after February 27th?

A. Yes.

Q. Have you engaged during your employment with the company in any outside activity of employment, of the type you just mentioned?

A. No.

Q. This was entirely different work?

A. Yes.

Trial Examiner Dudley: That is all.

Mr. Walsh: That is all.

Mr. Swiren: I have no further questions.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Dudley: We will reconvene the hearing. Come to order, please.

Mr. Walsh: Mr. Brunke.

ED BRUNKE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) You are Ed Brunke, are you?

A. Yes, sir.

Q. You were served with a subpoena this morning?

1229 A. I was.

Q. To appear before the Examiner?

A. Yes.

Mr. Collins: On behalf of the witness, I would like to claim his privilege, Mr. Examiner, under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your address.

A. I live at 1018 Park.

Q. How long were you employed at Fansteel?

A. I would say between 12 and 14 years.

Q. What was your job?

A. Grinder.

Q. In what department?

A. The contact department.

Q. When did you join the union?

A. Some time in July.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No.

Mr. Block: May I make a suggestion along the lines we talked about?

1230 Mr. Walsh: Yes.

Mr. Block: This is off the record, Mr. Reporter.

(Discussion outside the record.)

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh.) Between February 17th and February 26th, buildings 3 and 5 of the plant were occupied by certain men, were they not?

A. They were.

Q. Were you one of those men?

A. I was.

Q. When did you get your last pay from the company?  
A. Somewhere around the fifth of March.

Q. At the time you got your pay, did the company take up your pass?

A. They did.

Q. Did you go to the plant to get your pay?  
A. I did.

Q. Who gave you your last check?  
A. The timekeeper, Schardt.

Q. Did you have any talk with him that day?  
A. I didn't.

Q. Were you ready to go back to work?  
A. Not unless the union was recognized.

Mr. Swiren: What was the answer?

1231 Mr. Walsh: "Not unless the union was recognized."  
Mr. Block: Not unless what?

Q. (By Mr. Walsh.) "Not unless the union was recognized."  
What was your weekly pay just before February 17th, your average wage?  
A. \$23.60.

Q. How much have you earned since February 26th, 1937?  
A. About \$20.

Q. What did you work at?  
A. Little odd jobs.

Q. Did you carry on those odd jobs when you were working at Fansteel regularly?  
A. No.

Q. You were one of the respondents in the contempt case here, and a defendant in the injunction case in the Lake County Circuit Court, Case No. 37551, were you not?  
A. I was.

Q. You are now confined to the County Jail?  
A. I am.

Q. Because of being found guilty of being in contempt of that injunction, is that right?  
A. Yes.

Mr. Walsh: That is all.

Trial Examiner Dudley: Did you ask him whether his check paid him up through February 17th?

Q. (By Mr. Walsh.) What period did that last check  
1232 you got cover?

A. That was the latter part of—the last check I got was in the latter part of March. That covered the day we were in the building there.



Q. That is, for the time between the pay that preceded the time that the trouble occurred, and the time the trouble occurred, is that right?

Trial Examiner Dudley: You mean, up to the time the buildings were closed.

The Witness: I got one March 15th. That covered the first part of February. Then the last one I got, in the latter part of March, covered the last few days of pay that we were in the building.

Q. (By the Trial Examiner Dudley.) You say you got your last check on March 5th?

A. No, I got two of them in March.

Q. You testified you got your last check on March 5th. When did you get your last check?

A. I think we got two of them in March. That is what I thought you were referring to.

Q. (By Mr. Walsh.) You got one on March 5th, which you just told me about. Were there two checks?

A. Well, that is the way I thought it was. Pay-day starts on the 1st and 15th. Then you get that, on the 20th—

Q. That is payable on the 20th?

1233 A. Then there is one that starts on the 20th—

Q. On—

A. Or from the 15th to the last of the month and you get that on the 5th of the following month.

Q. Well, now, the one you got on the 5th was for the days of the 15th, 16th and 17th?

A. No. That would be for the first part of February.

Q. That would be for the first part of February?

A. We were in the building from the 17th on.

Q. Your normal pay day would have been the 20th?

A. The 20th.

Mr. Swiren: Was that two weeks' pay or one week's pay?

Q. (By Mr. Walsh.) That was two weeks' pay, was it not?

A. Yes.

Q. Do you remember how much your two weeks check was for the first half of February?

A. I believe it was around \$54.

Q. \$54.

A. Yes.

Mr. Walsh: That is all.

*Examination by Trial Examiner Dudley.*

Q. Were you paid up through February 17th, 1937?

A. Was I paid?

Q. Did you receive your pay for the period up through February 17th?

1234 A. No.

Q. You did not? Did you work up to February 17th?

A. Oh, yes, sure.

Q. Did you get paid for it?

A. Yes, up to the 17th.

Q. Did you get paid for any time after February 17th?

Mr. Walsh: You said your weekly average pay just prior to the trouble was \$23.60.

The Witness: Yes.

Mr. Walsh: And that your two weeks' pay for the first half of February was about \$54?

The Witness: Approximately, yes.

Q. (By Trial Examiner Dudley.) Were you working overtime?

A. Yes. We were working overtime just before the strike.

Q. How much did you get per hour?

A. 59 cents an hour.

Q. Was that your regular hourly rate?

A. Yes.

Q. How many hours did you work normally, per week?

A. Eight hours.

Q. How many hours a week?

A. Eight hours a day.

Q. How many days?

A. Five days was the regular week.

Q. That was a 40 hour week?

1235 A. Yes.

Q. And 59 cents an hour?

A. Yes.

Trial Examiner Dudley: All right.

Q. (By Mr. Walsh.) The stoppage of the work at the plant was caused by what?

A. By the strike.

Q. The management did not request you to cease work, did they?

A. No.

Mr. Walsh: Does that cover it?

Mr. Swiren: I just have one question.

*Cross-Examination.*

Q. (By Mr. Swiren.) By the "strike," you mean the taking over of Buildings 3 and 5, is that right?

Mr. Block: That is when it stopped.

Q. (By Mr. Swiren.) When those buildings were taken over, work was automatically stopped in the plant—

A. Yes.

Q. —is that right?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Thank you very much. You may be excused.

1236 (Witness excused.)

Mr. Walsh: Al Bunton.

AL BUNTON, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Al Bunton?

A. Yes, sir.

Q. You were subpoenaed to appear before the Examiner today, were you not?

A. Yes.

Mr. Collins: Mr. Examiner, I would like to claim the privilege of the witness under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted to the witness.

Q. (By Mr. Walsh.) What is your address, Mr. Bunton?

A. Libertyville, Illinois.

Q. How long have you been employed by Fansteel?

A. About 11 years.

Q. What was your job?

A. I was a grinder in the contact department.

Q. When did you join the union?

A. In July.

Q. 1936?

1237 A. Yes.

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Q. Did the plant operate between February 17th and February 26th?

A. No, it did not.

Q. Are you one of the men who occupied the plant between those dates?

A. Yes.

Q. You were one of the respondents in the contempt case, and a defendant in the injunction case in the Lake County Circuit Court, Case No. 37551?

A. Yes.

Q. You are now serving a term in jail on a contempt citation, are you not?

A. Yes.

Q. When did you get your last pay from the company?

A. I believe it was March 5th.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go then to the plant to get your pay?

A. Yes. I went in the office.

Q. Who gave you your last check?

A. I think it was the timekeeper, if I remember rightly.

Q. Did you have any conversation with him at that time?

A. No.

Q. How much did you get per hour at the plant?

1238 A. Well, my day rate was 55, and my piece rate, on my piece work, amounted to around 65.

Q. Around 65 cents an hour?

A. At that time.

Q. Just prior to the strike?

A. Yes.

Q. What was your weekly pay?

A. Well, it is hard to say because I sometimes worked day work. If I worked piece-work, the whole week, it would be around \$27.

Mr. Swiren: I cannot hear the witness back here. Will you read the last answer please, Mr. Reporter.

(The answer was read.)

Q. (By Mr. Walsh.) How much have you earned since February 26th?

A. I have earned \$5.50.

Q. What did you do to earn that?

A. Well, I done a little manual labor for a man.

Q. Normally when you worked at Fansteel, you did not do any work on the outside?

A. While I was working at Fansteel?

Q. Yes.

A. No.

Q. The cessation of work there was caused by the strike, was it not?

1239 A. Yes.

Q. The management did not ask you to stop work, did it?

A. No.

Mr. Walsh: That is all.

Mr. Swiren: When you referred to a strike, you mean the taking over of buildings 3 and 5, by you and the others, is that right?

The Witness: Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: John Camernik, Jr.

JOHN CAMERNIK, JR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Mr. Examiner, I would like to claim the privilege on behalf of Mr. John Bartholomew Camernik, Jr., under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your full name.

A. John Bartholomew Camernick.

Q. Where do you live?

1240 A. 1109 McAllister, North Chicago.

Q. How long were you employed at Fansteel?

A. Seven months.

Q. What was your job?

A. Maintenance.

Q. What department were you in? Did you work just all over the plant?

A. The entire plant.

Q. What did you do?

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A. I helped the plumber, the electrician, the carpenters, and so forth.

Q. When did you join the union?

A. In July.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17, 1937 and February 26th, 1937?

A. No, sir.

Q. When did you get your last pay?

A. The 5th of March I think.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go to the plant for your pay?

A. Yes.

Q. Who gave you your last check?

1241 A. The timekeeper.

Q. Did anyone connected with the company say anything to you when they took up your pass?

A. Luther was there.

Q. Who?

A. Luther Henry.

Mr. Swiren: Speak up a little please, I cannot hear you back here.

Mr. Walsh: Speak up a little louder so Mr. Swiren can hear you.

The Witness: Luther Henry was there, and he said "Well, I am very doubtful about you coming back."

Q. (By Mr. Walsh.) How much was your hourly rate?

A. 55.

Q. How many hours a week did you work?

A. It all depends on busy we were.

Q. What was the normal work week?

A. 40 hours.

Q. What did your pay average?

A. Straight time, \$22.

Q. Were you paid any overtime?

A. Yes.

Q. Do you know how much your pay was between February 1st and February 15th?

A. I don't, offhand.

1242 Q. How much have you earned since February 26th?

A. About sixty bucks, or somewhere around there.

Mr. Swiren: How much was that?



Mr. Walsh: \$60.

Q. (By Mr. Walsh.) What did you do to earn that money?

A. Radio work.

Q. Normally, do you do any outside work when you are working at Fansteel?

A. Just once in a while, for friends.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?

A. Yes, sir.

Q. You are one of the respondents in the contempt case, and one of the defendants in the injunction case, in the Fansteel matter, are you not?

A. Yes.

Q. You are presently confined to the County Jail serving a contempt term?

A. Yes.

Q. This stoppage of work that occurred on the 17th was caused by a strike, was it not?

A. Yes, sir.

Q. The management did not ask you to stop work, did they?

A. Yes.

Q. I do not think you understood the question. I  
1243 say, the management did not ask you to quit work, did they?

A. No, sir.

Q. Work stopped at the moment the buildings were taken over, is that right?

A. Yes.

Q. Were you offered re-employment?

A. No, sir.

Mr. Walsh: That is all.

Q. (By Trial Examiner Dudley.) You are not working now?

A. I was a couple of weeks ago, at Johnston Motors. I worked down there five days, and then sat around the courthouse.

Q. Was your pay from Johnston Motors included in this \$60?

A. Yes.

Q. Do you have a regular position, or regular employment from Johnston Motors now?

A. I don't get you.

Q. Do you have a regular position at Johnston Motors now?

A. I don't know.

Mr. Swiren: What was the answer to that?

Mr. Walsh: He does not know.

The Witness: I don't know. It is temporary. I was on the night force.

Mr. Walsh: That is all.

Trial Examiner Dudley: Is that all, Mr. Swiren?

Mr. Swiren: Just a moment.

1244 Mr. Walsh: Is that all?

Mr. Swiren: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Mr. Dietmeyer.

Mr. Collins: Mr. Examiner, I think that the record can show that I claim privilege on behalf of all of the witnesses, can it not?

Mr. Walsh: I think you had better claim it each time.

Mr. Collins: Perhaps I had better.

Trial Examiner Dudley: I think so.

VINCENT DIETMEYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Victor Dietmeyer?

The Witness: Yes.

Trial Examiner Dudley: Is it not Vincent Dietmeyer?

Mr. Collins: Vincent Dietmeyer; I stand corrected.

You were served with a subpoena, were you not, this morning?

The Witness: I was.

Mr. Collins: If the Examiner please, on behalf of this witness I would like to claim his privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

1245 Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your address, Mr. Dietmeyer?

A. 431 North Genessee.

Q. How long were you employed by Fansteel?

A. About four months.

Q. What was your job?

A. Electrician.

Q. Were you in the maintenance department?

A. Yes.

Q. When did you join the union?

A. In the latter part of November, I think.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17 and February 26?

A. No, sir.

Q. Speak up so the reporter can hear you.

A. No, sir.

Q. When did you get your last pay from the company?

A. I think I got it on March 5th.

Q. Did the company take up your pass at that time?

A. They did.

Q. Did you go to the plant to get your pay?

A. I went to the office.

1246 Q. Who gave you your last check?

A. The timekeeper.

Q. Were you offered re-employment at that time?

A. No, sir.

Q. Did you talk to anybody about it?

A. No, sir.

Q. How much was your hourly rate?

A. 70 cents an hour.

Q. How many hours a week did you work?

A. 40 hours.

Q. What was your average weekly pay?

A. My average weekly pay?

Q. Yes.

A. It was about \$34 a week.

Q. How much have you earned since February 26th?

A. Two weeks board.

Q. How much did that amount to in money?

A. About \$12.

Q. About \$12?

A. Yes.

Q. What did you do to earn that money?

A. I helped out in the tavern.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?

A. I was.

1247 Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

538 *Witnesses for National Labor Relations Board.*

A. Yes.

Q. The management did not request you to stop work on the 17th of February did they?

A. No.

Q. This stoppage of work was occasioned by the men taking over the plant, is that right?

A. That is right.

Mr. Walsh: That is all.

Q. (By Mr. Swiren.) Did you always work your full 40 hours a week?

A. Yes, sir.

Mr. Swiren: That is all.

Trial Examiner Dudley: Is that all, Mr. Walsh?

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Joseph Chudy.

JOSEPH CHUDY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Joseph Chudy?

The Witness: Yes, sir.

1248 Mr. Collins: You were served with a subpoena to appear before the Examiner?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, I would like to claim his privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?

A. 709 McAllister, Waukegan, Illinois.

Q. How long were you employed at Fansteel?

A. Approximately two years.

Q. What is your job?

A. Die polisher, Diamond, Tungsten, Carbide.

Q. In what department?

A. The wire department.

Q. When did you join the union?

A. The first part of August.

Q. 1936?

A. Right.

Q. Did the plant operate between February 17 and February 26, 1937?

A. No, it did not.

Q. When did you receive your last pay from the plant?

A. About the third of March, the third or fourth of March.

1249 Q. Did the company take up your pass at that time?

A. No, they didn't.

Q. Do you still have your pass?

A. Yes, I do.

Q. Did you go to the plant for your pay?

A. Yes, sir, I did.

Q. Who gave you your last check?

A. George Schardt.

Q. Did you talk to anybody connected with the company at that time?

A. I inquired about my car. I had my car on the premises at the time. I spoke to Bill Schultz about my car.

Q. Did they offer you re-employment at that time?

A. No, they didn't.

Q. What was your hourly rate of pay?

A. 62 cents an hour.

Q. How many hours a week did you work?

A. Eight hours, eight hours a day, five days a week.

Q. What was your weekly pay?

A. About \$24.80.

Q. How much have you earned since February 26th?

A. Approximately \$225.

Q. At what line of work did you do that?

A. As a salesman.

Q. When did you earn this money?

1250 A. Since the strike.

Q. Normally, when you are working at Fansteel, do you earn any money on the outside?

A. No, I do not.

Q. You were one of the men who occupied the plant between February 17th and February 26th, 1937?

A. Yes.

Q. You were one of the respondents in the contempt case and one of the defendants in the injunction case, were you not?

A. Yes, sir.

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Q. You are presently serving a term in the County Jail on the contempt citation?

A. Yes.

Q. The management did not ask you to stop work on the 17th of February, did they?

A. No.

Q. The stoppage was the result of the men taking over the plant, is that right?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Swiren: No questions.

Q. (By Trial Examiner Dudley.) Have you been offered employment by the Fansteel Company at any time since February 26th, 1937?

1251 A. No, I have not.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren.) Did you apply for re-employment?

A. No, I didn't.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: I will call Clarence Dreyer. The witness has been sworn previously, your Honor.

CLARENCE DREYER, was recalled as a witness for the National Labor Relations Board, being previously duly sworn, further testified as follows:

*Direct Examination.*

Trial Examiner Dudley: You also claimed your privilege before, did you not?

The Witness: Yes.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) How long were you employed by the Fansteel Company?

A. Approximately 17 years.

Q. What is your job?

A. During the time of the 17 years?

Q. Yes,—well, tell us what it was just recently.

A. Just recently I was working in the cutting department, cutting Tungsten discs for contact assemblies.



1252 Q. Now, when did you—

Mr. Swiren: Speak louder, Mr. Dreyer, so we can hear you over here.

Mr. Walsh: You will have to speak up so Mr. Swiren can hear you back there.

Q. (By Mr. Walsh.) When did you join the union?

A. Some time in July, 1936.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No.

Q. When did you get your last pay from the plant?

A. I don't remember the exact date, but was in March. It was for a day and six hours.

Q. Representing the period between February 15th and February 17th, is that right?

A. That is right.

Q. Did the company take up your pass at that time?

A. They did.

Q. Did you go to the plant to get your pay?

A. I did.

Q. Who gave you your last check?

A. George Schardt, the timekeeper.

Q. Were you offered re-employment at that time?

A. No.

Q. Have you since been offered re-employment?

1253 A. Since that time?

Q. Yes.

A. No.

Q. What was your hourly rate?

A. The hourly rate was 55 cents an hour.

Q. You worked 40 hours a week?

A. I worked 40 hours a week. I worked on piece work most of the time.

Q. What was your average weekly check, just prior to the strike?

A. Well, on piece work I should say about between \$30 and \$35. It would be an average of about \$37.

Q. An average of \$37?

A. No, I mean \$32.50.

Q. \$32.50 a week?

A. Yes, sir.

Q. How much have you earned since February 26th, 1937?

A. Oh, I should say around \$75 at the present time.

Q. What did you do?

542 *Witnesses for National Labor Relations Board.*

A. Just odd jobs.

Q. Do you remember the dates on which you earned this money?

A. It has been at different times. I don't remember.

Q. Normally when you are employed by Fansteel, do you do any work on the outside?

1254 A. Not for compensation, no.

Q. You were one of the men who occupied the plant between February 17 and February 26?

A. I was.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. I was.

Q. You are presently serving a jail sentence in the contempt case, are you not?

A. I am.

Q. The management did not ask you to stop work on February 17th, did they?

A. No, sir.

Q. The stoppage of work was occasioned by the men taking over the plant, was it not?

A. That is right.

Mr. Walsh: That is all.

*Cross Examination.*

Q. (By Mr. Swiren.) You were asked to return to work after the men were evicted from buildings 3 and 5, were you not?

A. I was asked to return to work as a new employee. I was asked to fill out a new application card, and I wasn't really promised a job. He told me he might find something for me to do.

1255 Q. He told you in order for you to come back to work it was necessary to fill out an application?

A. A new application form.

Q. Who told you that?

A. Luther Henry.

Q. You said you did not want to come back, is that right?

A. Not as a new employee.

Q. You did not want to fill out a new application?

A. No.

Q. He told you that after you filled out your application you would have to see Mr. Anselm, is that right?

A. He didn't. He told me he might find something for me to do.

Q. You refused to fill out an application and left, is that right?

A. Yes.

Q. Then you never went back any more?

A. I was back there once after that to get my personal belongings that I had in the plant.

Q. You did not apply for work at that time, though, did you?

A. No.

Q. You have held an office in Lodge 66?

A. I did at one time.

Q. What office did you hold?

1256 A. The office of vice president.

Q. You served on some of the committees that called on the management from time to time, did you not?

A. I believe three different committees.

Q. Yes. Are you still a member of Lodge 66?

A. Yes.

Q. When did you cease being an officer?

A. I don't remember the exact date, but it was some time after the 21st of September.

Q. You were a member of the bargaining committee that called on Mr. Anselm twice on the 17th, were you not?

A. No.

Q. You were not a member of that committee?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Art Holm, Jr.

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ART HOLM, JR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Art Holm, Jr.?

The Witness: Right.

1257 Mr. Collins: Were you subpoenaed to appear here before the Examiner?

The Witness: Yes.

Mr. Collins: Mr. Examiner, on behalf of the witness, I would like to claim his constitutional privilege under the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your address, Mr. Holm?

A. 142 McKinley Avenue.

Q. Waukegan?

A. Yes.

Q. How long were you employed by Fansteel?

A. Ten years.

Q. What is your job?

A. Millwright.

Q. In the maintenance department?

A. Yes.

Q. When did you join Lodge 66?

A. I don't know. Around September, I guess.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No, sir.

1258 Q. When did you get your last pay from the plant?

A. Somewheres in March.

Q. Did the company take up your pass?

A. Yes.

Q. Do you remember the date they took it up? Do you remember the date they took up your pass?

A. I don't remember.

Q. Did you go to the plant to get your last pay?

A. Yes.

Q. Who gave you your last check?

A. Schardt.

Q. Did you talk to him—

A. No.

Q. —at that time?

A. No.

Q. Have you been offered re-employment by the company since you were paid off?

A. No, sir.

Q. How much was your hourly rate?

A. 80 cents an hour.

Q. How many hours a week did you work?

A. 40.

Q. What was your average pay, just before the strike?

A. Around \$65 or \$70 for two weeks.

Q. For the two week period?

1259 A. Yes.

Q. That would be between \$32.50 and \$35.00, a week, is that right?

A. Yes.

Q. How much have you earned since February 26th?

A. \$9.

Q. What did you do to earn that?

A. I painted.

Q. Do you normally do any work outside of the plant?

A. No.

Q. When you are working in the plant?

A. No.

Q. You are one of the men who occupied the plant between February 17th and February 26th?

A. Yes.

Q. You are one of the defendants in the injunction case, and one of the respondents contempt case?

A. Yes.

Q. You are now serving a term in the county jail on the contempt citation, are you not?

A. Yes.

Q. The management did not ask you to stop work on February 17th, did it?

A. No.

Q. Its stoppage was occasioned by the men taking  
1260 over the plant is that right?

A. That is right.

Q. Have you been offered re-employment at any time by the company since February 26th?

A. No.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Did you apply for re-employment since that time?

A. What?

Q. Did you apply for re-employment since that time?

A. No.

Q. You have not?

A. No.

Q. By the way, when you say your average pay for two weeks was \$65 or \$70, were you not referring to your pay that you received twice a month?

A. Yes, twice a month.

Q. Sometimes that was more than two weeks, was it not?

A. A little more, and a little less sometimes. It all depends on how many days of pay it was.

Q. Outside of February, it would not be a little less at any time, would it?

A. No.

Q. If you had been offered re-employment by the 1261 company without any conditions on the 27th of February, were you ready to go back to work alone, regardless of what any of the other men did?

A. No.

Mr. Swiren: That is all.

Trial Examiner Dudley: Is that all, Mr. Walsh?

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Edward Kaucic.

EDWARD KAUCIC, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: What is your name?

The Witness: Edward Kaucic.

Mr. Collins: You were served with a subpoena to appear here this morning before the Examiner, were you not?

The Witness: Yes.

Mr. Collins: Mr. Examiner, on behalf of the witness I would like to claim his constitutional privilege, under Section 11, Paragraph 3 of the National Labor Relations Act.



Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) Will you spell your last name  
1262 for the reporter, please?

A. K-a-u-c-i-c.

Q. What is your address?

A. 670 Lincoln Street.

Q. Waukegan?

A. Waukegan.

Q. How long were you employed by Fansteel?

A. About a year.

Q. What was your job?

A. I was on the cracker.

Q. The cracker?

A. The ammonia cracker.

Q. The ammonia cracker?

A. Yes.

Q. In the chemical department?

A. Yes.

Q. When did you join Lodge 66?

A. In July.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th, 1937,  
and February 26th, 1937?

A. No, sir.

Q. When did you draw your last pay from the plant?

A. I guess it was in March, early March.

1263 Q. Did the company take up your pass at that time?

A. Yes, sir.

Q. Did you go to the plant to get your pass?

A. Yes, sir.

Q. Who gave you your check?

A. I don't know exactly who gave it to me.

Q. Did you talk to anybody there at that time?

A. I don't know who it was.

Q. Did they offer you re-employment?

A. No, sir.

Q. How much was your hourly rate?

A. 49 cents an hour.

Q. How many hours a week did you work?

A. 40.

Q. What was your average weekly pay?

A. About \$20.

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Q. About \$20?

A. Yes.

Q. How much have you earned since February 26th?

A. Since February?

Q. Yes.

A. Not a cent.

Q. Nothing?

A. No, sir.

Q. You are one of the men who occupied the building between the 17th and 26th of February, are you not?

A. Yes.

Q. You were one of the respondents in the contempt proceedings, and one of the defendants in the injunction case, is that right?

A. Yes.

Q. You are now serving a term in the County Jail for violation of that injunction order, is that right?

A. Yes.

Q. The management did not ask you to stop work on February 17th, did they?

A. I don't know.

Q. The stoppage of work was occasioned by the men taking over the building, is that not right?

A. Say that over again.

Q. Did the work at the plant stop because the men took over the buildings?

A. Yes.

Q. Is that right?

A. Yes.

Q. You have not since been offered re-employment by the company?

A. No, sir.

Q. At any time?

A. No, sir.

1265 Mr. Walsh: That is all.

*Crosss-Examination.*

Q. (By Mr. Swiren.) You left the buildings on February 26th?

A. Yes, sir.

Q. Did you apply for reinstatement or re-employment at the company since that time?

A. No, sir.

Q. You did not?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: Frank Musech.

FRANK MUSECH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Frank Musech?

The Witness: Yes, sir.

Mr. Collins: You were subpoenaed this morning, were you not, to appear here before the Examiner?

The Witness: I was.

Mr. Collins: I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) How do you spell your last name?

A. M-u-s-e-c-h.

Q. What is your address?

A. 1039 Adams, North Chicago.

Mr. Swiren: You will have to speak louder. I cannot hear you back here.

Mr. Walsh: Keep your voice up a little bit, so everybody can hear you.

Trial Examiner Dudley: There is a room full of people and they all want to hear you. Keep your voice up please.

Mr. Swiren: I cannot hear a thing he is saying back here.

Q. (By Mr. Walsh.) How long were you employed by Fansteel?

A. About 18 months.

Q. What was your job?

A. I was a chemical worker.

Q. You were in the chemical department?

A. Yes, sir.

Q. When did you join Lodge 66?

A. July 4th.

Q. 1936?

A. Yes.

1267 Q. When did you get your last pay from the company?

A. March 6th.

Q. Did the company take up your pass at that time?

A. They did.

Q. Who took up the pass?

A. I don't know the fellow's name.

Q. Did you talk to anybody there at that time?

A. I didn't.

Q. Did the company offer you re-employment at that time?

A. They didn't.

Q. What was your hourly rate?

A. 54 cents.

Q. How many hours a week did you work?

A. 40.

Q. What was your average weekly pay? Just prior to the strike.

A. A little over \$21 a week.

Q. \$21.

A. Yes.

Q. How much have you earned since February 26th?

A. Nothing.

Q. You are one of the men who occupied the plant during the period from February 17th to February 26th?

A. I was.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case. were you not?

A. I was.

Q. You are presently confined to the County Jail serving a term for contempt, is that right?

A. Yes, sir.

Q. Did the management ask you to stop work on the 17th of February?

A. They didn't.

Q. Did the stoppage of work occur because of the men taking over the plant?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. Have you been offered re-employment at any time since February 26th?

A. No, sir.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Did you know the plant had reopened after the men had been evicted by the sheriff?

A. I didn't hear the question.

Q. Did you know that the plant reopened after February 26th?

A. No, I didn't.

Q. Do you now know whether it is open?

1269 A. Yes.

Q. Do you know when it reopened?

A. I don't.

Q. After you got out of the buildings on February 26th, did you apply for reinstatement, or re-employment?

A. I didn't.

Q. After that date, did you go to the union headquarters?

A. I don't remember.

Q. Do you not remember whether you ever did?

A. No.

Q. Did you do anything to find out whether the plant was running again?

A. I did.

Q. Did you find out?

A. Yes.

Q. What did you find out?

A. I learned the plant reopened.

Q. When? When did you learn that?

A. I don't remember the date.

Q. Tell us about when it was, approximately?

A. (No answer.)

Q. Let me see if I can help you. You got your pay check when?

A. March 6th.

Q. The plant was partially running at that time, was it not?

1270 A. I couldn't tell.

Q. When did you find out that it was running?

A. About three or four weeks later.

Q. Did you go over to the plant then and ask for re-employment or reinstatement?

A. I didn't.

Q. Did you try to get work at the plant?

A. I didn't.

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Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Angelo Galbavy.

ANGELO GALBAVY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Angelo Galbavy?

The Witness: Yes.

Mr. Collins: Will you spell the last name for the reporter?

The Witness: G-a-l-b-a-v-y.

Mr. Collins: Were you served with a subpoena this morning—

The Witness: Yes.

1271 Mr. Collins: —to appear here before the Examiner?

The Witness: Yes.

Mr. Collins: On behalf of the witness, I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) Angelo, what is your address?

A. 1215 Adams, North Chicago.

Q. North Chicago?

A. North Chicago.

Q. How long have you been employed by Fansteel?

A. Since 1929.

Q. 1929?

A. Yes.

Q. What is your job?

A. Wire drawer.

Q. You are in the wire department?

A. Yes.

Q. When did you join the union?

A. In July, 1936.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No.



Q. When did you draw your last pay from the company?

1272 A. On the 5th of March, 1937.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go to the plant to get your pay?

A. It was in the main office.

Q. In the main office?

A. Yes.

Q. Did you talk to anybody there at that time?

A. No.

Q. Did they offer to take you back to work?

A. No.

Q. Have you been offered re-employment since the time you got your last pay?

A. No, sir.

Q. What was your hourly rate?

A. 65 cents.

Q. 65 cents an hour?

A. Yes.

Q. How many hours a week did you work?

A. Usually, towards the last, 40 hours a week.

Q. How much was your weekly pay?

A. About \$26 a week.

Q. How much have you earned since February 26th, on the outside?

A. \$39.

1273 Q. \$39.

A. Yes.

Q. How did you earn it?

A. Working for Waukegan Township.

Q. Normally when you are working at Fansteel, do you do any work on the outside?

A. No.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are presently confined in the County Jail—

A. Yes.

Q. —on a contempt citation?

554 *Witnesses for National Labor Relations Board.*

A. Yes.

Q. The management did not ask you to quit work on February 17th, did they?

A. What?

Q. The management did not ask you to quit work, on February 17th, did they?

A. No.

Q. The stoppage of work was caused by the men taking over the plant, is that right?

1274 A. That is right.

Q. Have you been offered re-employment at any time since February 26th?

A. Not in the factory.

Q. Not at Fansteel?

A. No.

Q. Are you willing to go back to work, if everybody goes back?

Mr. Swiren: That is objected to.

The Witness: Yes.

Mr. Swiren: That is objected to.

Mr. Walsh: I will withdraw it.

Mr. Swiren: May the answer be stricken, if it appears in the record?

Trial Examiner Dudley: The answer may be stricken.

Mr. Walsh: I thought you wanted that.

Mr. Swiren: I did not ask that question.

Mr. Walsh: Very well. I will withdraw it.

Mr. Swiren: If counsel and the Examiner did not see the difference between that question and my question, I am afraid I have failed.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Swiren.) Did you apply for re-employment after you left the buildings?

1275 A. No.

Q. You knew the plant had reopened, did you not?

A. I seen a lot of strange people going in there. I didn't know what they were doing there.

Q. You did not know whether they were going in there to play a baseball game, or to work, did you?

A. No.

Q. You learned, did you not, that a lot of strange people

do not necessarily mean there is to be a baseball game, did you not?

A. (No answer.)

Q. You found out, did you not, that strange people may have been there for other purposes?

A. They couldn't learn my job.

Q. You didn't try to find out whether somebody was operating the plant or not?

A. I didn't care.

Q. You did not care?

A. No.

Q. If at the time you applied for your pay, or shortly thereafter, the company had offered to re-employ you without any conditions, would you have gone back?

A. They didn't offer me nothing.

Q. If they had offered it to you, would you have gone back without any conditions?

1276 A. I would if everybody would go back that is out.

Q. But not otherwise?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Anton Nagode.

ANTON NAGODE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: Your name is Anton Nagode, is it?

The Witness: Yes.

Mr. Collins: You were served—

Trial Examiner Dudley: Pardon me, Mr. Collins.

Mr. Collins: Yes.

Trial Examiner Dudley: Will you spell that name?

Mr. Collins: N-a-g-o-d-e. Is that correct?

The Witness: Yes.

Mr. Collins: You were served with a subpoena this morning, were you?

The Witness: Yes.

Mr. Collins: I would like to claim the witness' privilege

under Section 11, paragraph 3 of the National Labor  
1277 Relations Act.

Trial Examiner Dudley: The privilege is granted the  
witness.

Q. (By Mr. Walsh.) What is your address?

A. 435 Waynelow.

Q. Is that in Waukegan?

A. Yes.

Q. How long were you employed by Fansteel?

A. 17 years.

Q. What is your job?

A. Electric furnace operator.

Q. In the sintering department?

A. No; in the brazing department.

Q. The brazing department?

A. Yes.

Q. When did you join the union?

A. In June, 1936.

Q. Did the plant operate between February 17th and Feb-  
1278 ruary 26th, 1937?

A. No, sir.

Q. When did you get your last pay from the plant?

A. March 5th.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Who gave you your last check?

1278 A. I believe the timekeeper, George Schardt.

Q. At the company's office?

A. Yes, sir.

Q. Were you offered re-employment at that time?

A. No, sir.

Q. Did you talk to anybody down there that day about  
coming back to work?

A. No, sir.

Q. Have you been offered re-employment at anytime by  
the company since?

A. No, sir.

Q. What was your hourly rate?

A. 70 cents.

Q. How many hours a week did you work?

A. 40.

Q. What was your average weekly pay just prior to the  
strike?

A. About \$28.

Q. \$28?

A. Yes.

Q. How much have you earned since February 26th?

A. \$26.

Q. What did you do to earn that?

A. Washed walls.

Q. Normally do you do any work outside of the plant?

1279 A. No, sir.

Q. When you are working there?

A. No.

Q. You were one of the men who occupied the plant between February 17 and February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are presently serving a term in the County Jail?

A. Yes.

Q. The management did not ask you to stop work, did they, on February 17th?

A. No, sir.

Q. The stoppage occurred because the men took over the plant, is that right?

A. Yes, sir.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Did you ever apply for re-employment or reinstatement?

A. You mean, out at the Fansteel?

Q. Yes.

A. No, sir.

1280 Q. Were you willing to go back to work if reinstatement were offered you, without any conditions?

A. I was, as a member of Lodge 66.

Q. What is that?

A. I was, as a member of Lodge 66.

Q. Did it make any difference to you whether the other men went back or not?

A. I would go back with them. I wouldn't go back alone.

Q. You would not go back unless all of the others went back with you, is that it?

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A. Then I would go back, yes, sir.

Q. If they all went back, you would go back, but not otherwise?

A. Yes.

Q. You were not willing to return except on that condition?

A. Yes.

Q. Is that right?

A. Yes.

Mr. Swiren: Did you ask him about being a respondent?

Mr. Walsh: Yes.

Mr. Swiren: All right. That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Merritt Pratt.

1281 MERRITT PRATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Mr. Collins: State your name.

The Witness: Merritt Pratt.

Mr. Collins: Spell the last name, please.

The Witness: P-r-a-t-t.

Mr. Collins: Were you served with a subpoena to appear before the Examiner here this morning?

The Witness: I was.

Mr. Collins: I claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: It is so granted.

Q. (By Mr. Walsh.) What is your address, Mr. Pratt?

A. 22nd and Dickey Avenue, North Chicago.

Q. How long were you employed by Fansteel?

A. Seven months.

Q. What is your job?

A. Swedging.

Q. When did you join the union?

A. Some time in August.

Q. 1936?

A. 1936.



Q. Did the plant operate between February 17th and 1282 February 26th, 1937?

A. No, sir.

Q. When did you draw your last pay from the plant?

A. I don't know; it was around the 5th of March.

Q. Did the company take up your pass at that time?

A. They did.

Q. Did you go to the plant to get your last pay?

A. I went to the office.

Q. Who gave you your check?

A. I don't know; it was some young fellow; I don't know who it was.

Q. Did you talk to anybody connected with the company at that time?

A. No.

Q. Did the company offer you re-employment at that time?

A. No.

Q. Have they since offered you re-employment, since the time you got your last check?

A. No.

Q. What was your hourly rate?

A. 58 cents.

Q. How many hours did you work a week?

A. We worked over time sometimes. It averaged 40 hours.

Q. What was your weekly pay?

A. \$23.20.

Q. How much have you earned since February 26, on the outside.

1283 A. \$10, I think.

Q. \$10?

A. Somewhere around there.

Q. What did you do to get that?

A. Caddying.

Q. Caddying?

A. Yes.

Q. Normally, when you are employed at Fansteel, do you do any work on the outside?

A. No.

Q. You were one of the men who occupied the plant between February 17th and February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are presently confined to the county jail on a contempt citation, is that correct?

A. Yes.

Q. Did the management ask you to stop work on the 17th of February?

A. No.

Q. The stoppage was caused by the men taking over the plant—

A. Yes.

Q. —is that right?

A. That is right.

1284 Q. Have you been offered reemployment by the company at any time since you got your last check?

A. No.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Have you ever applied for reinstatement or reemployment at the company?

A. No, sir.

Q. What was the answer?

A. No, sir.

Q. After you and the others were evicted from buildings 3 and 5, were you willing to return to work without any conditions, and would you have returned if the company had made an offer?

A. Not unless they all went back.

Q. Not unless all of the other men went back?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Robert Pratt.

ROBERT PRATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

1285

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Robert Pratt, is it?

A. Yes.

Q. You are the brother of Merritt Pratt who just testified?

A. Yes.

Q. You were served with a subpoena this morning to appear before the examiner, is that correct?

A. Yes.

Mr. Collins: I would like to claim the witness' privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?

A. Twenty-second and Dickey Avenue.

Q. North Chicago?

A. North Chicago.

Q. How long have you been employed by Fansteel?

A. About 3 years.

Q. What is your job?

A. Swedging.

Q. When did you join the union?

A. It was either in July or August. I just don't remember.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th and February 26th? February 26, 1937?

A. No.

Q. When did you draw your last pay from the plant?

A. I think it was in March.

Q. In March?

A. Yes.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go to the plant to get your check?

A. I did.

Q. Who gave you your check?

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A. I just don't know his name; it was some young fellow there.

Q. Did you talk to anybody at the office of the company that day?

A. No.

Q. Did the company offer you reemployment at that time?

A. No.

Q. Was the plant running?

A. I just don't remember whether it was or not at that time.

Q. Has the company offered you reemployment at any time since that time?

A. Yes.

Q. They have?

A. Yes.

Q. You did not accept reemployment?

1287 A. No.

Q. Why did you not accept that reemployment?

A. Because they didn't recognize our union.

Mr. Swiren: What was the question?

The Witness: Because they didn't recognize our union.

Mr. Walsh: I asked him why he did not accept reemployment.

Mr. Swiren: I see.

Mr. Walsh: He said "because they didn't recognize our union."

Mr. Swiren: All right.

Q. (By Mr. Walsh.) What is your hourly rate?

A. 60 cents an hour.

Q. How many hours a week did you work?

A. We were supposed to work 40 hours a week. It was supposed to be a 40-hour week.

Q. What did your weekly pay average, just before the strike?

A. I don't remember. It was around \$65 or \$70, somewhere around there, for two weeks.

Q. For the two weeks' period?

A. Yes.

Q. That would be somewhere around \$32.50 or \$35 per week?

A. That was overtime, and everything.

Q. That included overtime?

A. Yes.

Q. How much have you earned since February 26th?  
1288 A. About \$40.

Q. What did you do to earn that?

A. I was tending bar a few hours at night.

Q. Normally when you are working at the company, do you have any outside employment?

A. No.

Q. You were one of the men who occupied the plant between February 17th and February 26th?

A. I was.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Yes.

Q. Did the management ask you to stop work on the 17th of February?

A. No.

Q. The stoppage was occasioned by the men taking over the buildings, was it not?

A. Yes.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Who offered you reemployment, Mr. Pratt?

A. Frank Mack.

Q. Who is that?

A. Frank Mack.

Q. What did you say to him?

1289 A. Well, he asked me if I ever considered going back there, and I told him I did. He said, Well, you better come down and fill out a new application." He said, "They are all doing it."

Q. What did you say?

A. Well, I says, "I don't feel at this time like I should come down."

Q. Is that all?

A. And I said, "I never went through a picket line in my life, and I am getting too old now to start with it."

Q. What else did you say?

A. (No answer.)

Q. Did you say anything else?

A. I just can't remember.

Q. Is that all you remember that you said?

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A. That is all I remember at the present time.

Q. You did not discuss union recognition?

A. I don't know.

Q. You did not discuss contracts with him, did you?

A. No.

Q. You did not discuss those things with any other officer or representative or employee of the company other than those who were not engaged in work, is that right?

A. That is right.

Q. You were not willing to go back to work at that time, is that right?

1290 A. That is right.

Q. You say your checks amounted to \$65 or \$70; those were bi-monthly checks, were they not?

You got a check twice a month?

A. Twice a month.

Q. Sometimes that was for more than two weeks, was it not? Sometimes it would be for a 15 or 16-day period?

A. They would run from a 10-day to a 13-day pay, or sometimes 14.

Q. It would depend upon how much work you did during the period; you did not work every day, is that it?

They worked every day. Saturdays would be overtime.

Q. A 10-day period would be 2 weeks. 13 days would be a little over 2½ weeks, would it not?

A. Yes.

Q. Did you ever apply for reemployment or reinstatement?

A. No, I didn't.

Q. You knew the plant was operating, did you not?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Andrew Rode.



ANDREW RODE, called as a witness for the National  
1291 Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Andrew Rode?

A. Yes.

Q. Rode, is that?

A. Yes.

Q. Will you spell it for the reporter, please?

A. R-o-d-e.

Q. The sheriff served you with a subpoena this morning and told you to come in here this afternoon, did he not?

A. Yes.

Mr. Collins: I would like to claim this witness' privilege, if the examiner please, under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) Where do you live?

A. Park Avenue, North Chicago.

Q. How long were you employed at Fansteel?

A. Two years.

Q. What is your job down there?

A. Grinder.

Q. Grinder?

A. Yes.

Q. In the contact department?

1292 A. Yes.

Q. You are a side grinder?

A. Yes.

Q. When did you join the union?

A. In August 1936.

Q. August 1936?

A. Yes.

Q. Did the plant operate between February 17th and February 26th?

A. No.

Q. When did you get your last pay from the company?

A. My last pay?

Q. Yes.

566 *Witnesses for National Labor Relations Board.*

A. Before I went out?

Q. No. When did you get your last pay after you left the plant?

A. In March.

Q. In March?

A. Yes.

Q. Did the company take up your pass at that time?

A. No.

Q. Did you go down to the office to get your check?

A. Yes.

Q. Did the company offer to take you back to work?

A. No, they did not take me back. I never knew about it when they started work.

Q. You did not know about it when they started working?

A. No.

Q. How much is your hourly rate of pay?

A. \$19.60.

Q. You mean, \$19.60 a week?

A. \$19.60 a week.

Q. How much do you get an hour?

A. 49 cents an hour.

Q. You worked 40 hours a week?

A. Yes.

Q. That is, you worked 5 days, 8 hours a day?

A. Yes.

Q. Have you earned any money since you came out of the plant?

A. (No answer.)

Q. Have you earned any money, outside?

A. No.

Q. No?

A. No.

Q. You are one of the men who was in the plant?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are now in jail?

1294 A. Yes.

Q. When the work stopped that day, did the management tell you to stop work? The management did not tell you to stop work, did they?

A. No.

Q. Work stopped because the men took over the buildings; is that right?

A. That is right.

Q. Has the company offered to take you back at any time since you came out?

A. No. They didn't say nothing about it.

Mr. Walsh: That is all.

*Cross-Examination*

Q. (By Mr. Swiren) Did you ever go back and apply for reinstatement?

A. No.

Q. What was the answer?

A. No.

Q. You found out that the plant was operating again sometime after the men left the buildings, did you not?

A. No.

Q. You did not know the plant was operating?

A. No.

Q. Do you know whether it is operating now?

A. No, I don't know anything about it.

1295 Q. You did not know anything about it?

A. No.

Q. You did not try to find out?

A. No.

Q. You do not care whether the plant is operating or not, is that right?

A. No.

Q. If you had been offered reinstatement without any conditions after you left the buildings, would you have taken that reinstatement?

A. No; I ain't takin' nothing.

Mr. Swiren: What was that answer, Mr. Reporter?  
(The answer was read.)

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

Mr. Walsh: Arvo Romppaine.

ARVO ROMPPAINE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Arvo Romppaine?

A. Correct.

Trial Examiner Dudley: Will you spell it, please?

Q. (By Mr. Collins) How do you spell your first name?

A. A-r-v-o.

1296 Q. Now, spell your last name.

A. R-o-m- a couple of p's-a-i-n-e.

Mr. Swiren: Are there two m's or one m?

The Witness: One.

Q. (By Mr. Collins.) Were you served with a subpoena yesterday to appear in court before the examiner today?

A. I was.

Q. I would like to claim the privilege of the witness under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh.) What is your address, Mr. Romppaine?

A. It is the county jail, right now.

Q. I mean, when you are not confined to jail where do you live?

A. 603 McAllister.

Q. How long were you employed by Fansteel?

A. About a year and a half.

Q. What is your job?

A. Well, the last 7 months, I was drawing wire in the wire department.

Q. When did you join the union?

A. I guess it was in about August.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No, sir.

Q. When did you get your last pay from the company?

1297 A. I believe I got it on about March 5th.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you talk to anybody about going back to work at that time?

A. I don't think so, at that time.

Q. Did the company offer to take you back at that time?

A. I believe somebody over in the office asked me to fill out an application at that time.

Q. Did you fill out an application?

A. No.

Q. Has anybody connected with the company offered you reemployment since?

Mr. Swiren: That is objected to. This witness has testified he was offered reemployment. I do not know of anything in the Act that requires us to do that every day, or repeatedly during each day.

Mr. Walsh: I want to find out what the facts are.

Mr. Swiren: I do not see that it makes any difference.

Trial Examiner Dudley: Objection overruled. He may answer.

Mr. Walsh: Go ahead.

Mr. Swiren: Will the examiner rule as to how often you are required to ask a man to come back?

Trial Examiner Dudley: The witness may proceed.

The Witness: What was the question?

1298 Mr. Walsh: Read the question.

(The question was read.)

A. No, sir.

Q. (By Mr. Walsh.) What is your hourly rate of pay?

A. 53, I guess.

Mr. Swiren: We object, if the examiner please. This witness testified he has been offered reemployment. I cannot see that it makes any difference.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: That additional objection is made to all further testimony of this witness, on this phase of the proceeding.

Trial Examiner Dudley: The objection is noted, and it is overruled.

Q. (By Mr. Walsh.) How many hours a week did you work?

A. At least 40.

Q. What was your weekly pay?

A. About \$21 or \$20.

Mr. Swiren: I did not hear the answer.

The Witness: \$21.

Q. (By Mr. Walsh.) About \$21?

A. Yes.

Q. How much have you earned since February 26th, on the outside?

A. Well, around \$60.

Q. What did you do to earn that?

1299 A. I worked in a nursery for a while, for a few weeks.

Q. When was that?

A. I think I quit working there 2 weeks ago Friday or Saturday.

Q. You were one of the men who occupied the plant between February 17th and February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Yes.

Q. Did the management ask you to stop working on the 17th of February?

A. Not the management, no.

Q. The stoppage of the work occurred by reason of the men taking over the plant—

A. Yes.

Q. —is that right?

A. Yes.

Mr. Walsh: That is all.

*Cross-Examination.*

Q. (By Mr. Swiren.) Who asked you to fill out an application, Mr. Romppaine?

A. I can't remember who it was.

Q. Who told you that that was the—withdraw that.

1300 When you were asked to fill out an application, you were told that an application was necessary to be reinstated, is that right?

A. Yes. They told me to fill it out.

Q. In order to get reinstated?

A. Yes, sir.

Q. You refused to do that?

A. Yes. I said I was—I considered myself a striker there.

Q. You were unwilling to go back to work without any conditions, is that right?

A. Yes. I didn't want to go back to work without union recognition.



Q. By that, you mean you did not want to go back to work without having all the others go back to work at the same time?

A. Yes.

Q. And if the jobs of 40 or 45 of these men had been abolished, and the company would not take them back, you were unwilling to go back, is that right?

A. Yes.

Q. I do not recall whether you said you were in the buildings during the period from the 17th to the 26th of February, when they were taken over by some of the men.

A. I was in there.

Q. You were in there?

A. Yes.

Mr. Swiren: That is all.

1301 Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: If the examiner please, I suggest that we adjourn at this time.

Trial Examiner Dudley: Very well. We will reconvene at 1:45 p. m.

(Thereupon at 12 o'clock noon a recess was taken until 1:45 o'clock p. m.)

After recess.

(The hearing was resumed at 1:45 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Dudley: I will call the hearing to order. May we have as much quiet as possible, please.

Mr. Walsh: I will call Eric Lindberg.

ERIC LINDBERG, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Eric Lindberg?

A. Yes.

Q. Spell the last name, please.

A. L-i-n-d-b-e-r-g.

Q. Were you served with a subpoena, Mr. Lindberg?

A. Yes.

Mr. Collins: Mr. Examiner, I would like to claim

1302 the privilege of this witness under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?

A. 715 Washington Street.

Q. Talk up, please, Mr. Lindberg.

A. 715 Washington Street.

Q. How long have you been employed by Fansteel?

A. Eleven months.

Q. What was your job?

A. I was working in the cutting department.

Q. The contact department?

A. Yes.

Q. Did the plant operate between February 17th and February 26th?

A. No.

Q. When did you draw your last pay from the plant?

A. March 5th.

Q. Did the company take up your pass at that time?

A. They did not.

Q. Did you go to the plant to get your pay?

A. I did.

Q. Who gave you your last check?

A. I don't know his name; the paymaster, they call him.

1303 Q. Did you talk with anybody there about coming back to work?

A. I inquired from Luther Henry. I went to talk to him.

Q. Did you talk to him?

A. I did.

Q. What did Luther Henry say to you?

A. Not much. I just went there, and he asked me if I wanted—

Mr. Swiren: Speak up a little louder, please.

Mr. Walsh: Keep your voice up, so Mr. Swiren can hear you back there.

The Witness: He asked me if I wanted to come back to work.

Q. (By Mr. Walsh.) What did you tell him?

A. I said, "No." I says, "No, there is a strike on."

Q. Did he say anything else?

A. No.

Q. How much was your hourly rate of pay?

A. Well, I was working on piecework at the time when the strike broke out. Otherwise, I was getting 53 cents an hour.

Q. How much did you earn on piecework?

Trial Examiner Dudley: How much was that?

Mr. Walsh: 53 cents.

Trial Examiner Dudley: All right.

Q. (By Mr. Walsh.) How much was your average weekly pay, just before the strike?

A. Of course, I was working a lot of overtime there.  
1304 It was \$22, \$21, \$20, or something like that.

Q. About \$21 a week?

A. Yes, when I was working day work.

Q. Mr. Lindberg, did you get that when you were working piecework?

A. No, not for the last 2 weeks.

Q. During the 2 weeks preceding the strike you did not work piecework?

A. Yes.

Q. Oh; I misunderstood you. How much did you earn, working on piecework?

A. I had \$65.43 for 105 hours.

Q. For 105 hours?

A. Yes.

Q. That was your pay just before the strike?

A. Yes.

Q. You are one of the men who were in the plant?

A. Yes. I was in there six days. I went out the 22d of February.

Q. You were one of the respondents in the contempt case, were you not?

A. No, I was not.

Q. Were you one of the defendants in the injunction case?

A. No.

Q. When the plant stopped work on February 17th,  
1305 did the management tell you to stop work?

A. No. I wasn't in the building. I walked in after-

ward.

Q. You went in after the work had stopped?

A. Yes.

Q. Have you ever been offered reemployment since the plant reopened, after the strike?

A. Yes, I have.

Q. That is what you have just told us about, when Luther Henry talked to you?

A. No.

Q. Did somebody else talk to you?

A. Yes.

Q. Who else offered you reemployment?

A. Ed Simms.

Q. He is a foreman over there?

A. Yes.

Q. What did Mr. Simms say to you?

A. He just asked me if I wanted to go back to work, and I says, "No."

Q. Why did you tell him "no?"

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Objection overruled.

The Witness: Well, because I wanted to go on the picket line.

Q. (By Mr. Walsh.) Are you still on strike from that plant?

1306 A. Yes, I am.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) When you talked to Luther Henry—or, rather, after you talked to Luther Henry,—did you fill out an application for reemployment or reinstatement?

A. I didn't.

Q. You never filled one out?

A. I haven't.

Q. What is that?

A. I haven't.

Q. You will have to keep your voice up a little. I cannot hear you back here.

A. All right.

Q. Did you say anything to Simms or Luther Henry other than you have just testified to?

A. Well, of course, Simms was up to the house. He asked me if I won't go back to work, and I said "no."

He says, "Why don't you come down and talk to Luther Henry?" I says, "Luther Henry has always been good to me. That is the least thing I can do." So I went down and talked to him, and when I come in Luther asked me if I wanted to go back to work. I said, "I don't know. I will think about it."

Q. You did not tell him definitely you would not come back, did you?

1307 A. What?

Q. You did not tell him definitely you would not come back?

A. No. I called him up in the office. I told Luther, I said, "I will think it over this afternoon, and I will call you up."

Afterwards I called him up and told him I wouldn't come back to work.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

Mr. Walsh: This witness may be excused from further attendance, if the examiner does not mind. He is working. If you want him, Mr. Swiren, let us know and we will send for him.

Mr. Swiren: All right.

Mr. Walsh: I guess that is all.

Mr. Swiren: Just a minute. I would like to ask one more question.

Mr. Walsh: Wait a minute, Mr. Lindberg.

Q. (By Mr. Swiren.) Are you working now?

A. Yes, I am.

Q. How long have you been working?

A. Well, I started work May 3rd.

Q. You started to work May 3rd?

A. Yes.

Q. You have been working ever since?

A. When it don't rain.

1308 Q. What type of work are you doing?

A. I work for a gardner down at Lake Forest.

Mr. Swiren: What was that answer?

Mr. Walsh: He says he works for a gardner down at Lake Forest.

Mr. Swiren: All right.

Q. (By Mr. Walsh.) How much money have you earned since February 26th?

A. I can't say exactly, but it is about \$120.

Q. About \$120?

A. It is something like that. Of course, I wouldn't say on the penny or the dollar, either. I got \$90 so far.

Q. When you were working at Fansteel, did you do any work on the outside?

A. No, I didn't.

Mr. Walsh: That is all.

Q. (By Trial Examiner Dudley.) Is this a permanent position that you have?

A. No.

Q. What are you doing?

A. I work in the garden.

Q. You work in the garden?

A. Yes. I may be laid off tomorrow, for all I know.

Trial Examiner Dudley: That is all. Have you anything further, Mr. Walsh?

1309 Mr. Walsh: No.

Mr. Swiren: That is all.

Trial Examiner Dudley: The witness is excused from further attendance. If we need you, Mr. Lindberg, we will let you know.

The witness: All right.

(Witness excused.)

Mr. Walsh: Alvar Romppaine.

ALVAR ROMPPAINE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) State your name, please.

A. Alvar Romppaine.

Q. Spell your first name, please.

A. A-l-v-a-r.

Q. Now spell your last name.

A. R-o-m-p-p-a-i-n-e.

Q. Were you subpoenaed to appear here today?

A. Yes.

Mr. Collins: I would like to claim the witness' privilege, Mr. Examiner, under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

1310 Q. (By Mr. Walsh.) What is your address?  
A. 603 McAllister Avenue, Waukegan.

Q. How long have you been employed by Fansteel?  
A. A little over 8 months, I believe.

Q. What was your job?

A. It was—well, I was cleaning rugs and sheets. I worked on the ammonia cracker.

Mr. Swiren: Speak up a little louder, Mr. Romppaine.

The Witness: I worked on the ammonia cracker, and cer-



tain shifts, on the midnight shift, and the afternoon shift. I worked in the hydrogen house, all three together.

Q. (By Mr. Walsh.) So, as I understand you, you were in several departments, is that right?

A. Yes. I worked taking care of the furnace in different departments.

Q. When did you join the union?

A. I joined it about in January 1937.

Q. Did the plant operate between February 17th and February 26th?

A. No, it didn't.

Q. When did you get your last pay?

A. I believe it was about the 5th of March.

Q. Did the company take up your pass at that time?

A. Yes. They took my pass up on the check I got before the past pay.

1311 Q. The check before the last one?

A. Yes.

Q. Do you know what that date was?

A. Oh, it was a few days after, about the 20th—no. It was about the 1st of March, I believe.

Q. About the 1st of March?

A. Yes.

Q. Did you go down to the plant to get your pay?

A. Yes. I went in the office.

Q. Who gave you your check?

A. George Schardt.

Q. Is he the paymaster?

A. Well, no. He is not the regular paymaster that comes around the plant.

Q. Did you talk to anybody connected with the company about going back to work?

A. No.

Q. Have you been offered reemployment by the company since?

A. No.

Q. How much was your hourly rate of pay?

A. About 49 cents an hour.

Q. How many hours a week did you work?

A. I worked 40 hours a week.

Q. What did your weekly pay amount to?

A. About \$19. and some cents.

1312 Q. How much have you earned since February 26th?

A. I would say approximately between—I couldn't say for sure, but I estimate around \$55 or \$60.

Q. What did you do to earn this money?

A. I worked in the Waukegan nursery.

Q. Are you one of the men who occupied the plant between February 17th and February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, is that right?

A. Yes.

Q. When the work stopped on February 17th, the management did not tell you to stop work, did they?

A. No, they didn't.

Q. The stoppage occurred because men took over the buildings, is that correct?

A. Yes.

Mr. Walsh: You may inquire.

*Cross Examination.*

Q. (By Mr. Swiren.) You did not apply for reinstatement or reemployment, did you, Mr. Romppaine?

A. No, I didn't.

Q. If you had been affirmatively offered reinstatement or reemployment without any conditions immediately after you left the building, would you have accepted such reemployment or reinstatement?

1313 A. No, not unless they gave me conditions, that they would reinstate the men that went out.

Q. You mean, all of the men who went out?

A. Yes.

Q. Would it make any difference—strike that out.

Then, as I understand it, you want all of the men reinstated, whether their jobs have been abolished or not, before you are willing to go back to work, is that right?

A. Yes; all the men that went out on protest.

Q. By "protest," you mean the men who seized and held buildings 3 and 5, do you not?

A. Yes.

Q. Do you include the men who resisted the sheriff, as the men who engaged in the protest, too?

A. Yes; the men who were in the buildings at the time.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.  
(Witness excused.)

Mr. Walsh: Luther Small.

LUTHER SMALL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) You are Luther Small?

A. Right.

1314 Q. Were you served with a subpoena, Mr. Small?

A. I was.

Mr. Collins: I would like to claim the privilege of the witness under section 11, paragraph 3, of the National Labor Relations Act, if the examiner please.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?

A. 104 Sumac.

Q. How long were you employed by Fansteel?

A. Slightly over 2 years.

Q. Two years?

A. Yes.

Q. What was your job?

A. I was an electric welding furnace operator.

Q. In what department, Mr. Small?

A. The contact department.

Q. When did you join the union?

A. Sometime in July; somewhere around the first part of July 1936.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No, sir.

Q. When did you draw your last pay?

A. Somewhere around the first part of March.

1315 Q. Did the company take up your pass at that time?

A. They did.

Q. Did you talk to anybody there about coming back to work when you got your last check?

A. Not at the factory.

Q. Have you been offered reemployment down there?

A. I don't know if it was actually reemployment that was offered, but there was two men working there that came around to see me at my home, and asked me if I would go back to work.

Q. Who were those men?

A. One was Victor Oliver, and one was Robert Johnson.

Q. Are they employees of the company? They are not officers, are they?

A. They were at that time employees.

Mr. Swiren: Which Johnson is that?

The Witness: Robert Johnson.

Q. (By Mr. Walsh.) What was your hourly rate of pay?

A. 63 cents an hour.

Q. How many hours did you work?

A. At the last we were working quite a few hours. The average, of course, was 40 hours for a standard week.

Q. What was your average pay check?

A. You mean, the average weekly check?

Q. Yes, just before the strike.

A. Before the strike it was quite high, on account 1316 of a lot of overtime. In fact, the last one amounted to slightly over \$40 per week; but the 40-hour rate would make \$25.20 per week.

Q. Do you know whether the company is operating overtime in your department now?

A. I couldn't say.

Q. How much have you earned since February 26th?

A. Approximately—

Mr. Swiren: That is objected to, if the examiner please, on the grounds previously mentioned.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: He has testified that he was asked to return to work, and did not do so.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: Does the respondent assume that the employees who solicited this man to come back to work were acting on the instructions of the company?

Mr. Swiren: I have not the slightest idea of what they were acting on. I do not know the men.

Mr. Walsh: They were not officers of the company. They were just employees there. Did they have authority to solicit this man to return to work?

Mr. Swiren: Yesterday, or the day before, Mr. Walsh quite strenuously insisted on bringing forward statements of an apprentice from the maintenance department, attempting to bind the company.

1317 I am a little bit amazed at his being concerned about the record now with respect to other employees. I think he will have to make his own record.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: Read the last question, please.

(The question was read.)

A. About \$150.

Q. (By Mr. Walsh.) What did you do to earn that money?

A. I was a gardener's helper.

Q. Normally, do you do any outside work when you are working at Fansteel?

A. Very little, if any.

Q. For pay?

A. Yes.

Q. You are one of the men who occupied the plant between February 17th and February 26th?

A. I am.

Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Yes.

Q. Is that right?

A. Yes.

Q. You are presently confined to the county jail—

A. Right.

Q. —on a contempt citation?

1318 A. Yes, sir.

Q. When the work stopped on February 17th, did the management ask you to stop work?

A. No, sir.

Q. The stoppage occurred because the men took possession of the plant, is that right?

A. Yes.

Mr. Walsh: That is all; you may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) When the two men asked you to return to work, you declined, is that right?

A. Yes, sir.

Q. At no time did you come to the plant and apply for reinstatement or reemployment, did you?

A. No, sir.

Q. I take it from your refusal to go back when you were asked by the two former employees that you were not willing to go back to work unconditionally, is that right?

A. Not under the existing conditions; no sir.

Q. What building were you in from February 17th to February 26th?

A. I was in building 5 practically all the time.

Q. Who designated you as corporal in that building?

A. Well—

Mr. Walsh: I object, unless it is shown he was corporal.

1319 Q. (By Mr. Walsh.) Were you?

A. Yes, sir.

Mr. Swiren: Is that better, Mr. Walsh?

Mr. Walsh: Much better. Thank you.

Q. (By Mr. Swiren.) Now that you have explained to Mr. Walsh that you were corporal, tell us who designated you as corporal.

A. No one told me I should be corporal.

Q. You took the title yourself, did you?

A. No sir. I was asked if I would assume that job.

Q. Who asked you?

A. There were several of the fellows there and we had a kind of a meeting.

Q. Tell us who asked you.

A. I don't know just offhand.

Q. Can you tell us one?

A. Charles Warner.

Q. Did anybody else ask you?

A. I don't remember just who else asked me, but I know there was quite a few.

Q. None of the company officers, or nobody from the company management asked you to be corporal, did they?

A. No.

Q. As corporal, did you go about any duties to produce any products in the plant?

A. No, sir.

1320 Q. You knew when the sheriff came there the first time, did you not?

A. Yes.

Q. When was that, on what day?

A. I am not sure. I believe it was the 18th of February.

Q. That is the day he served the injunction on you, is that right?

A. I believe so.

Q. And the next day he came with an attachment writ, or an arrest writ, is that right?

A. I don't know. I didn't see that, or know of it.



Q. You heard about it since, did you not?

A. Oh, yes.

Q. You heard about it in the plant, while you were there, did you not?

A. Well, yes, I did.

Q. Did you let the sheriff and his deputies in either on the 18th or 19th?

A. I had no occasion to let them in; no, sir.

Q. Did you or any of your associates in the building?

A. No, sir; not that I know of.

Q. Each man was not working separately, was he?

A. No. It was a group.

Q. You were working as a group, were you not?

A. Yes, sir.

1321 Q. The sheriff tried to get in on the 19th, did he not?

A. I think he did.

Q. He was not permitted to come in, was he?

A. Why, no.

Q. The doors were barred?

A. No, sir.

Q. They were not barred? They were open?

A. Part of the time, yes.

Q. When the sheriff was trying to get in, were they open?

A. I couldn't say. I wasn't near the door at that time.

Q. You did see him or any of his deputies get in, did you?

A. No, sir.

Q. Did anything else happen that day?

A. I don't understand just what you mean.

Q. Did anything unusual happen on the 19th, besides the sheriff's not being able to get in the plant?

A. Yes. There was a gas attack, I believe it is called.

Q. The sheriff used gas to try to get you out of the building, did he not?

A. That is right.

Q. Is that correct?

A. Yes.

Q. Did you leave?

A. Not on the 19th; no, sir.

Q. You stayed there, eating and sleeping, but not doing any productive work from the 17th of February until the 26th of February, is that right?

A. That is right.

Q. During that period you carried on your service as corporal?

A. Yes, sir.

Q. Did you do anything to the windows on the day of the 19th?

A. Yes. There were quite a few windows broken.

Q. From the inside?

A. They were started to be broken from the outside.

Q. By the gas shells coming in?

A. That is right.

Q. Then the men on the inside proceeded to break as many of the rest as they could, to get air, is that right?

A. As many as we thought necessary, yes.

Q. That was quite a good many, was it not?

A. I think there was quite a few on that one floor, yes.

Trial Examiner Dudley: Mr. Swiren, I thought you were going to forego all of this, in order to save time.

Mr. Swiren: We think it is important as to reinstatement. We will only do it with respect to some of these men whom we know have such unusual information.

This is part of the problem of reinstatement.

Mr. Walsh: I will be glad to recall them at any time you want, if you think it is necessary for your side of the case to go into it.

1323 Mr. Swiren: I do, with respect to some of these men.

Trial Examiner Dudley: That is opposed to your stipulation, is it not?

Mr. Swiren: Does the examiner think there is no connection whatever between the violation of law by the seizure of the plant and the resistance of the sheriff, and the refusal to offer these men reemployment?

Trial Examiner Dudley: You have that evidence in your exhibits, and you also have stipulated that you can bring in all of the affirmative defense you want by recalling these men.

You are just cluttering up the record by bringing it in at this time.

Mr. Swiren: I think the record is being cluttered up by testimony about not being offered reinstatement with respect to men who violated the law by engaging in the seizure of the plant.

That is all the cluttering up that I can see.

Mr. Walsh: Two wrongs do not make a right, Mr. Swiren.

Trial Examiner Dudley: I will instruct the witness that he does not need to answer further questions along this line.

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: I will instruct the witness he does not have to answer further questions along this line.

You can recall him when you get ready to put in your affirmative defense, for such questions as you see fit at that time.

1324 Mr. Swiren: We think it is proper cross-examination with respect to the subject matter of the direct examination.

Does the examiner rule that is not so?

Trial Examiner Dudley: Yes.

Mr. Swiren: I am going to ask another question along that line, so my record is perfectly clear on the subject.

Q. (By Mr. Swiren) The sheriff returned and made an effort to get you out of the building on the morning of the 26th of February, did he not?

Mr. Walsh: That is objected to.

Trial Examiner Dudley: I will allow him to answer that one question.

The Witness: He did.

Q. (By Mr. Swiren) When did you leave?

Mr. Walsh: I object to that.

Trial Examiner Dudley: He may answer that.

Mr. Walsh: The testimony is he did not leave until the 26th of February.

Mr. Swiren: It is the 26th of February I am talking about now, Mr. Walsh.

Mr. Walsh: I beg your pardon.

Q. (By Mr. Swiren) That was when you and the rest in the building left?

A. Yes.

Q. Is that right?

1325 A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Roy Brown.

ROY BROWN, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, testified further as follows:

*Direct Examination.*

Mr. Walsh: This witness has been sworn, and has previously testified, Your Honor.

Trial Examiner Dudley: Very well.

Q. (By Mr. Walsh) How long were you employed by Fansteel, Mr. Brown?

A. About 10 years.

Q. What was your job?

A. I worked in the wire department, annealing wire.

Q. When did you join the union?

A. In July, 1936.

Q. Did the plant operate between February 17th and February 26th?

A. No.

Q. When did you get your last pay?

A. March 5th.

1326 Q. Did the company take up your pass at that time?

A. Yes. They took it up.

Q. Did you go to the plant to get your pay?

A. Yes.

Q. Who gave you your check?

A. George Schardt.

Q. Did you have any talk with him about going back to work at that time?

A. No.

Q. Have you been offered reinstatement in the plant?

A. Yes. Since then, I have.

1327 Mr. Swiren: You will have to speak louder. I cannot hear you.

Mr. Walsh: Keep your voice up, Mr. Brown.

The Witness: All right.

Q. (By Mr. Walsh.) You say you have been offered reinstatement?

A. I have been offered reinstatement.

Q. Who offered you reinstatement?

A. Florin Schardt, my foreman.

Q. I believe you testified about that the other day, did you not?

A. Yes.

Q. What is your hourly rate of pay?

A. 58 cents.

Q. You work 40 hours a week?

A. Yes.

Q. What did your weekly pay amount to?

A. \$23.20.

Q. How much money have you earned since February 26th?

A. None.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not, Mr. Brown?

A. Yes.

Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?

1328 A. Yes.

Q. When the work stopped on the 17th of February, did the management tell you to stop work?

A. No.

Q. The stoppage was caused by the men taking possession of the buildings, buildings 3 and 5, was it not?

A. Yes.

Mr. Walsh: You may inquire.

*Cross-Examination.*

Q. (By Mr. Swiren.) Who offered you reinstatement?

A. Florin Schardt, the foreman of my department.

Q. The foreman of your department?

A. Yes.

Q. You did not accept that offer at that time?

A. (No answer.)

Q. You did not go back to work?

A. I did not go back to work, no.

Q. Did you go back and apply for re-employment or reinstatement at any time?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Lester Crump.

1329 LESTER CRUMP, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination.*

Q. (By Mr. Collins.) Your name is Lester Crump?

A. Yes.

Q. Were you served with a subpoena this morning?

A. I was.

Mr. Collins: Mr. Examiner, I would like to claim the privilege of the witness under Section 11 paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The witness is granted the privilege.

Q. (By Mr. Walsh.) What is your address?

A. 1510 Hamilton Court.

Q. You will have to keep your voice up. Will you give your address again?

A. 1510 Hamilton Court.

Q. How long have you been employed by the Fansteel Corporation?

A. About a year and three months.

Q. What was your job?

A. Electrician's helper.

Q. In the maintenance department?

A. In the maintenance department.

1330 Q. When did you join the union?

A. In the first part of July.

Q. Did the plant operate between the 17th and 26th of February?

A. It did not.

Q. When did you draw your last pay?

A. March 5th.

Q. Did the company take up your pass at that time?

A. Not at that time; earlier.

Q. They took it up earlier?

A. Yes.

Q. Did you talk to anybody about returning to work?

A. No, sir.

Q. Either at the time of the first pay you got after you got out of the plant, or the last pay?



A. No.

Q. Have you since been offered re-employment?

A. No, sir.

Q. What was your hourly rate of pay?

A. 65 cents an hour.

Q. Did you work 40 hours a week?

A. Well, 40 hours was an average week, but there was overtime.

Q. What did your weekly pay average just before the strike?

A. About \$32.00 a week.

1331 Q. How much money have you earned since February 26th?

A. Well, I estimate that at \$100.

Mr. Swiren: How much?

The Witness: \$100.

Mr. Swiren: Please speak up a little. I cannot hear you.

Q. (By Mr. Walsh.) What did you do to earn that?

A. Well, I took a job as a gardener's helper, and then I went to driving a truck.

Q. Normally when you are working at the plant, do you do any outside work for pay?

A. No, sir.

Q. Are you one of the men who occupied the buildings between February 17th and February 26th?

A. I am.

Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. I was.

Q. When work stopped on the 17th of February, did the management ask you to stop work?

A. No, sir.

Q. The stoppage was caused by the men taking over the plant, is that right?

A. Right.

Q. Have you ever been offered re-employment since that time?

A. No.

1332 Mr. Walsh: You may inquire.